

1 STATE OF MINNESOTA DISTRICT COURT  
2 COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT

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4 State of Minnesota,  
5 Plaintiff, File No. 19HA-CR-14-2677  
6 vs. JURY TRIAL  
7 Brian George Fitch, VOLUME VIII  
8 Defendant.  
9 -----

10 The above-entitled matter came duly on for Jury Trial  
11 before the Honorable Mary J. Theisen, one of the judges of the  
12 above-named court, on the 2nd day of February, 2015, at the  
13 Stearns County Government Center, St. Cloud, Minnesota.

14 APPEARANCES:

15 MR. PHILLIP PROKOPOWICZ, Dakota County Assistant County  
16 Attorney, and MR. RICHARD J. DUSTERHOFT, Assistant Ramsey County  
17 Attorney, appeared on behalf of the State of Minnesota.

18 MS. LAURI TRAUB and MR. GORDON COHOES, Assistant Public  
19 Defenders, appeared on behalf of the defendant.

20 ALSO PRESENT:

21 Brian George Fitch, the defendant, appeared in person.  
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(The following Jury Trial proceedings take place  
on February 2, 2015:)

(The following proceedings take place outside of  
the presence of the jury:)

THE COURT: Let's go on the record. Folks, I know  
some of you are new to the courtroom today, you haven't been  
here before; and I just want to tell you that when you're in  
here, no talking. Once we start the arguments, there isn't  
going to be movement in and out; and so if you need to use  
the restroom, you'll want to do it before we start with the  
arguments. No gum, no food; no newspapers, magazines;

1 things like that.

2 And then we have some things we need to make a  
3 record on this morning. And first, Ms. Traub, would you  
4 inquire of your client about his request for the instruction  
5 on his right not to testify?

6 MS. TRAUB: Certainly.

7 Brian, what the judge is asking us to put on the  
8 record is a decision that we made, you made in consultation  
9 with Mr. Cohoes and I, about whether you wanted an  
10 instruction included for the jury on your right not to  
11 testify. You and I and Mr. Cohoes spoke about that,  
12 actually it was last Thursday, and we talked about the fact  
13 that some people like to have that instruction in because it  
14 reminds the jury of the fact that you do not have to testify  
15 and other people are of the opinion that it should be left  
16 out because it points out that you didn't testify. We  
17 weighed the pros and cons of each, we talked about the fact  
18 that this is an intelligent jury and they were going to  
19 remember you didn't testify whether or not we put that  
20 instruction in the jury instructions; and after we had that  
21 discussion you made a decision, and am I correct in telling  
22 the judge it is your decision that you want that instruction  
23 included in the jury instructions?

24 THE DEFENDANT: Yes, it is.

25 MS. TRAUB: Do you have any questions for myself

1 or Mr. Cohoes or the judge about that right now?

2 THE DEFENDANT: No, I don't.

3 THE COURT: Okay. And I did include that then in  
4 the instructions. I also had a request to include  
5 lesser-includes of the assault 2 for each of the St. Paul  
6 officers as well as Intentional Discharge of a Firearm, and  
7 I did include those. I was also asked to include a specific  
8 instruction on evaluation of informant testimony, and I did  
9 not include that. I felt that the -- the instruction on  
10 credibility of witnesses was sufficient to cover the issue.

11 And then, Mr. Prokopowicz, I think you wanted to  
12 introduce Court Exhibit B.

13 MR. PROKOPOWICZ: I did, Your Honor, but I left it  
14 in Hastings. I will submit it later then, if the Court will  
15 permit me.

16 THE COURT: I will permit you to do that. What I  
17 will want you to do is show it to defense counsel first and  
18 then agree on it and then submit it, and then it will be  
19 Court Exhibit B.

20 MR. PROKOPOWICZ: I will, Your Honor.

21 THE COURT: Otherwise, is there anything else we  
22 need to do for the record before the jury -- we start with  
23 the jury?

24 MR. PROKOPOWICZ: We have nothing, Your Honor.

25 MS. TRAUB: No/, thank you.

1 THE COURT: Okay. Then we will simply wait until  
2 the jurors are ready and then I think we will be ready to  
3 go. So let me know when the jurors are ready. Okay. Thank  
4 you.

5 (Short recess in the matter, after which the jury  
6 enters the courtroom and the following takes place in their  
7 presence:)

8 THE DEPUTY: Please be seated.

9 THE COURT: Good morning, ladies and gentlemen. I  
10 hope you had a good weekend. I have some instructions that  
11 I would like to read to you and we need to have them passed  
12 out to the jurors, please.

13 (Instructions handed out to jurors.)

14 THE COURT: Ladies and gentlemen, the evidentiary  
15 stage of the case is now complete. What remains before you  
16 begin your deliberations is for me to instruct you on the  
17 law that applies to this case and for both attorneys to  
18 present their final arguments.

19 The order in which these instructions are given to  
20 you is not intended to indicate that you must consider the  
21 issues in any particular order. That is for you to decide.  
22 You are to consider the instructions I give you as a whole  
23 and regard each instruction in the light of all the others.

24 It is your duty to decide the questions of fact in  
25 this case and to determine whether the defendant is guilty

1 or not guilty of the charged offenses. In doing so, you  
2 must consider all the evidence you have heard and seen in  
3 this trial, and you must disregard anything you may have  
4 heard or seen elsewhere about this case.

5 It is my duty to give you the rules of law you  
6 must apply in arriving at your verdict. You must follow and  
7 apply the the rules of law as I give them to you, even if  
8 you believe the law is or should be different.

9 I have not intended by my instructions, rulings or  
10 expressions to indicate my opinion regarding the facts or  
11 the outcome of this case. If I have said or done anything  
12 that would seem to indicate that I have such an opinion, you  
13 are to disregard it.

14 The fact that the defendant is on trial should not  
15 be considered by you as in any way suggesting guilt. The  
16 defendant is presumed to be innocent of the charges made  
17 against him, and that presumption remains with the defendant  
18 unless and until he has been proven guilty of the charges by  
19 proof beyond a reasonable doubt. That the defendant has  
20 brought before -- has been brought before the Court by the  
21 ordinary processes of the law and is on trial should not be  
22 considered by you as in any way suggesting guilt. The  
23 burden of proving guilt is on the State of Minnesota. The  
24 defendant does not have to prove his innocence.

25 Proof beyond a reasonable doubt is such proof as

1 ordinarily prudent men and women would act upon in their  
2 most important affairs. A reasonable doubt is a doubt based  
3 upon reason and common sense. It does not mean a fanciful  
4 or a capricious doubt, nor does it mean beyond all  
5 possibility of doubt.

6 You have been allowed to take notes during the  
7 trial. You may take these notes with you to the jury room.  
8 You should not consider these notes as binding or  
9 conclusive, whether they are your notes or those of another  
10 juror. The notes should be used as an aid to your memory  
11 and not as a substitute for it. It is your recollection of  
12 the evidence that should control. You should disregard  
13 anything contrary to your recollection that may appear from  
14 your own notes or those of another juror. You should not  
15 give greater weight to a particular piece of evidence solely  
16 because it is referred to in a note taken by a juror.

17 A fact may be proved by either direct or  
18 circumstantial evidence or by both. The law does not prefer  
19 one form of evidence to the other.

20 A fact is proved by direct evidence when, for  
21 example, it is proved by witnesses who testify to what they  
22 saw, heard or experienced or by physical evidence of the  
23 fact itself. A fact is proved by circumstantial evidence  
24 when its existence can be reasonably inferred from other  
25 facts proved in the case.

1           You are the sole judges of whether a witness is to  
2           be believed and of the weight to be given a witness's  
3           testimony. There are no hard and fast rules to guide you in  
4           this respect. In determining believability and weight of  
5           testimony, you may take into consideration the witness's  
6           interest or lack of interest in the outcome of the case;  
7           relationship to the parties; ability and opportunity to  
8           know, remember and relate the facts; manner and appearance;  
9           age and experience; frankness and sincerity or lack thereof;  
10          the reasonableness or unreasonableness of their testimony in  
11          light of all the other evidence in the case; any impeachment  
12          of the witness's testimony; and any other factors that bear  
13          on the question of believability and weight.

14           In the last analysis, you should rely on your own  
15          experience, good judgment and common sense.

16           In deciding the believability and weight to be  
17          given the testimony of a witness, you may consider evidence  
18          that the witness has been convicted of a crime. You may  
19          consider whether the kind of crime committed indicates the  
20          likelihood the witness is telling or not telling the truth,  
21          and evidence of a statement by or conduct of the witness on  
22          some prior occasion that is inconsistent with present  
23          testimony. Evidence of any prior inconsistent statement or  
24          conduct should be considered only to test the believability  
25          and weight of the witness's testimony. In the case of the



1 defendant, however, evidence of any statement he may have  
2 made may be considered by you for all purposes.

3 A witness who has special training, education or  
4 experience in a particular science, occupation or calling is  
5 allowed to express an opinion as to certain facts. In  
6 determining the believability and weight to be given such  
7 opinion evidence, you may consider the education, training,  
8 experience, knowledge and ability of the witness; the  
9 reasons given for the opinion; the sources of the  
10 information; and factors already given to you for evaluating  
11 the testimony of any witness. Such opinion evidence is  
12 entitled to neither more nor less consideration by you than  
13 any other evidence.

14 In this case the State has introduced evidence of  
15 an occurrence on December 17, 2014 at the Oak Park Heights  
16 Correctional Facility, Oak Park Heights, Minnesota. As I  
17 told you at the time this evidence was offered, it was  
18 admitted for the limited purpose of assisting you in  
19 determining whether the defendant committed those acts with  
20 which he is charged in the indictment. The defendant is not  
21 being tried for and may not be convicted of any offense  
22 other than the charged offenses. You are not to convict the  
23 defendant on the basis of any occurrence on December 17,  
24 2014 at the Oak Park Heights Correctional Facility in Oak  
25 Park Heights, Minnesota. To do so might result in unjust,

1 double punishment.

2 The State must convince you by evidence beyond a  
3 reasonable doubt that the defendant is guilty of the crime  
4 charged. The defendant has no obligation to prove his  
5 innocence. The defendant has the right not to testify.  
6 This right is guaranteed by the federal and state  
7 constitutions. You should not draw any inference from the  
8 fact that the defendant did not testify in this case.

9 Attorneys are officers of the court. It is their  
10 duty to make objections they think proper and to argue their  
11 client's cause. However, the arguments or other remarks of  
12 an attorney are not evidence. If the attorneys or I have  
13 made or should make any statement as to what the evidence is  
14 which differs from your recollection of the evidence, you  
15 should disregard the statement and rely solely on your own  
16 memory. If an attorney's argument contains any statement of  
17 the law that differs from the law I give you, disregard the  
18 attorney's statement.

19 During this trial I have ruled on objections to  
20 certain testimony and exhibits. You must not concern  
21 yourselves with the reasons for the rulings, since they are  
22 controlled by rules of evidence.

23 By admitting into evidence testimony and exhibits  
24 as to which objection was made, I did not intend to indicate  
25 the weight to be given such testimony and evidence. You are

1 not to speculate as to possible answers to questions I did  
2 not require to be answered. You are to disregard all  
3 evidence I have ordered stricken or I have told you to  
4 disregard.

5 During the trial certain summaries and  
6 calculations were introduced as an aid to help explain the  
7 facts disclosed by other documents that are evidence in the  
8 case. Summaries are based on the underlying supporting  
9 material. You should, therefore, give them only such weight  
10 as you think the underlying material deserves.

11 In this case the defendant has been charged with  
12 multiple offenses. You should consider each offense and the  
13 evidence pertaining to it separately. The fact that you may  
14 find defendant guilty or not guilty as to one of the charged  
15 offenses should not control your verdict as to any other  
16 offense.

17 Ladies and gentlemen, there are nine counts that  
18 you will be considering. Count 1 is Murder in the First  
19 Degree. The statutes of Minnesota provide that whoever,  
20 with intent to effect the death of that person or another,  
21 causes the death of a peace officer while the peace officer  
22 is engaged in the performance of official duties is guilty  
23 of a crime.

24 The elements of Murder in the First Degree are:

25 First, the death of Officer Scott Patrick must be

1 proven.

2 Second, the defendant caused the death of Officer  
3 Scott Patrick.

4 Third, the defendant acted with the intent to kill  
5 Officer Scott Patrick. To find the defendant had an intent  
6 to kill, you must find that the defendant acted with the  
7 purpose of causing death or believed that the act would have  
8 that result. Intent, being a process of the mind, is not  
9 always susceptible to proof by direct evidence, but may be  
10 inferred from all the circumstances surrounding the event.  
11 It is not necessary that the defendant's act be  
12 premeditated.

13 Fourth, at the time the defendant committed the  
14 act that caused the death of Officer Scott Patrick, Officer  
15 Scott Patrick was a peace officer.

16 Fifth, at the time the defendant committed the act  
17 that caused the death of Officer Scott Patrick, Officer  
18 Scott Patrick was engaged in the performance of official  
19 duties as a peace officer.

20 Sixth, the defendant's act took place on July 30,  
21 2014, in Dakota County, Minnesota.

22 If you find that each of these elements has been  
23 proven beyond a reasonable doubt, the defendant is guilty.  
24 If you find that any element has not been proven beyond a  
25 reasonable doubt, the defendant is not guilty.

1           Count 2 is Attempted Murder in the First Degree.  
2           The statutes of Minnesota provide that whoever, with intent  
3           to effect the death of that person or another, attempts to  
4           cause the death of a peace officer while the peace officer  
5           is engaged in the performance of official duties is guilty  
6           of a crime.

7           The elements of Attempted Murder in the First  
8           Degree of a peace officer for Count 2 are as follows:

9           First, the defendant attempted to cause the death  
10          of Officer Timothy Bohn. A person is guilty of an attempt  
11          to commit a crime when, with intent to commit the crime, the  
12          person does an act that is a substantial step toward and  
13          more than mere preparation for the commission of the crime.

14          An attempt to commit a crime requires both an  
15          intent to commit the crime and a substantial step towards  
16          the commission of the crime.

17          In determining whether a substantial step has been  
18          taken, you must distinguish between mere preparation for and  
19          actually beginning to commit the criminal act. Mere  
20          preparation, which may consist of planning the offense or of  
21          obtaining or arranging the means for its commission, is not  
22          sufficient to constitute an attempt. An act by a person who  
23          intends to commit a crime is an attempt if the act itself  
24          clearly indicates the intent to commit that specific crime,  
25          and it tends directly to accomplish the crime. The act

1           itself need not be criminal in nature.

2                       Second, defendant acted with the intent to kill  
3           Officer Timothy Bohn. To find the defendant had an intent  
4           to kill, you must find that the defendant acted with the  
5           purpose of causing death or believed that the act would have  
6           that result. Intent, being a process of the mind, is not  
7           always susceptible to proof by direct evidence but may be  
8           inferred from all the circumstances surrounding the event.  
9           It is not necessary that the defendant's act be premeditated.

10                      Third, at the time the defendant attempted to  
11           cause the death of Officer Timothy Bohn, Officer Timothy  
12           Bohn was a peace officer.

13                      Fourth, at the time the defendant attempted to  
14           cause the death of Officer Timothy Bohn, Officer Timothy  
15           Bohn was engaged in the performance of official duties as a  
16           peace officer.

17                      Fifth, defendant's act took place on July 30, 2014  
18           in Ramsey County, Minnesota.

19                      If you find that each of these elements has been  
20           proven beyond a reasonable doubt, the defendant is guilty.  
21           If you find that any element has not been proven beyond a  
22           reasonable doubt, the defendant is not guilty.

23                      Count 3, Attempted Murder in the First Degree.

24                      The statutes of Minnesota provide that whoever, with intent  
25           to effect the death of that person or another, attempts to

1 cause the death of a peace officer while the peace officer  
2 is engaged in the performance of official duties is guilty  
3 of a crime.

4 The elements of Attempted Murder in the First  
5 Degree of a Peace Officer for Count 3 are as follows:

6 First, the defendant attempted to cause the death  
7 of Sergeant Don Benner. A person is guilty of an attempt to  
8 commit a crime when, with intent to commit the crime, the  
9 person does an act that is a substantial step toward and  
10 more than mere preparation for the commission of the crime.

11 In determining whether a substantial step has been  
12 taken, you must distinguish between mere preparation for and  
13 actually beginning to commit the criminal act. Mere  
14 preparation, which may consist of planning the offense or of  
15 obtaining or arranging the means for its commission, is not  
16 sufficient to constitute an attempt. An act by a person who  
17 intends to commit a crime is an attempt if the act itself  
18 clearly indicates the intent to commit that specific crime  
19 and it tends directly to accomplish the crime. The act  
20 itself need not be criminal in nature.

21 Second, defendant acted with the intent to kill  
22 Sergeant Don Benner. To find the defendant had an intent to  
23 kill, you must find that the defendant acted with the  
24 purpose of causing death or believed that the act would have  
25 that result. Intent, being a process of the mind, is not

1 always susceptible to proof by direct evidence but may be  
2 inferred from all the circumstances surrounding the event.  
3 It is not necessary that the defendant's act be  
4 premeditated.

5 Third, at the time the defendant attempted to  
6 cause the death of Sergeant Don Benner, Sergeant Don Benner  
7 was a peace officer.

8 Fourth, at the time the defendant attempted to  
9 cause the death of Sergeant Don Benner, Sergeant Don Benner  
10 was engaged in the performance of official duties as a peace  
11 officer.

12 Fifth, the defendant's act took place on July 30,  
13 2014 in Ramsey County, Minnesota.

14 If you find that each of these elements has been  
15 proven beyond a reasonable doubt, the defendant is guilty.

16 If you find that any element has not been proven beyond a  
17 reasonable doubt, the defendant is is not guilty.

18 Count 4, Attempted Murder in the First Degree.

19 The statutes of Minnesota provide that whoever, with intent  
20 to effect the death of that person or another, attempts to  
21 cause the death of a peace officer while the peace officer  
22 is engaged in the performance of official duties is guilty  
23 of a crime.

24 The elements of an attempt to commit Murder in the  
25 First Degree of a police officer for Count 4 are as follows:



1           First, the defendant attempted to cause the death  
2 of Commander Karsten Jeffrey Winger. A person is guilty of  
3 an attempt to commit a crime when, with intent to commit the  
4 crime, the person does an act that is a substantial step  
5 toward and more than mere preparation for the commission of  
6 the crime.

7           In determining whether a substantial step has been  
8 taken, you must distinguish between mere preparation for and  
9 actually beginning to commit a criminal act. Mere  
10 preparation, which may consist of planning the offense or of  
11 obtaining or arranging the means for its commission, is not  
12 sufficient to constitute an attempt. An act by a person who  
13 intends to commit a crime is an attempt if the act itself  
14 clearly indicates the intent to commit that specific crime  
15 and it tends directly to accomplish the crime. The act  
16 itself need not be criminal in nature.

17           Second, defendant acted with the intent to kill  
18 Commander Karsten Jeffrey Winger. To find the defendant had  
19 an intent to kill, you must find that the defendant acted  
20 with the purpose of causing death or believed that the act  
21 would have that result. Intent, being a process of the  
22 mind, is not always susceptible to proof by direct evidence  
23 but may be inferred from all the circumstances surrounding  
24 the event. It is not necessary that the defendant's act be  
25 premeditated.

1 Third, at the time the defendant attempted to  
2 cause the death of Commander Karsten Jeffrey Winger,  
3 Commander Karsten Jeffrey Winger was a peace officer.

4 Fourth, at the time the defendant attempted to  
5 cause the death of Commander Karsten Jeffrey Winger,  
6 Commander Karsten Jeffrey Winger was engaged in the  
7 performance of official duties as a peace officer.

8 Fifth, the defendant's act took place on  
9 July 30th, 2014 in Ramsey County, Minnesota.

10 If you find that each of these elements has been  
11 proven beyond a reasonable doubt, the defendant is guilty.  
12 If you find that any element has not been proven beyond a  
13 reasonable doubt, the defendant is not guilty.

14 Count 5, Possession of a Firearm by an Ineligible  
15 Person. The Statutes of Minnesota provide that whoever  
16 possesses a firearm while ineligible to do so is guilty of a  
17 crime.

18 In this case the elements of Possession of a  
19 Firearm by an Ineligible Person are:

20 First, the defendant knowingly possessed a  
21 firearm.

22 Second, at the time the defendant was ineligible  
23 to possess firearms.

24 Third, the defendant's act took place on July 30,  
25 2014 in Dakota County, Minnesota.

1           Count 4, Assault in the Second Degree. The  
2 statutes of Minnesota provide that whoever assaults another  
3 with a dangerous weapon is guilty of a crime.

4           The elements of assault in the second degree are:

5           First, the defendant assaulted Officer Timothy  
6 Bohn. An assault is an act done with intent to cause fear  
7 of immediate bodily harm or death in another.

8           Second, the defendant in assaulting Officer  
9 Timothy Bohn used a dangerous weapon. A firearm, whether  
10 loaded or unloaded or even temporarily inoperable, is a  
11 dangerous weapon.

12           Third, the defendant's act took place on July 30,  
13 2014 in Ramsey County, Minnesota.

14           If you find that each of these elements has been  
15 proven beyond a reasonable doubt, the defendant is guilty.

16           If you find that any element has not been proven beyond a  
17 reasonable doubt, the defendant is not guilty.

18           If you find that the defendant is guilty of this  
19 offense, you will have an additional question to decide on  
20 the verdict form. The question is: Did the defendant use a  
21 firearm in commission of this offense? If you find beyond a  
22 reasonable doubt that defendant used a firearm in the  
23 commission of this offense, you will answer the question  
24 "Yes." If you do not find beyond a reasonable doubt that  
25 defendant used a firearm in commission of this offense, you

1 will answer the question "No."

2 Count 7, Assault in the Second Degree. The  
3 statutes of Minnesota provide that whoever assaults another  
4 with a dangerous weapon is guilty of a crime.

5 The elements of Assault in the Second Degree are:

6 First, defendant assaulted Sergeant Don Benner.

7 An assault is an act done with intent to cause fear of  
8 immediate bodily harm or death in another.

9 Second, the defendant, in assaulting Sergeant Don  
10 Benner, used a dangerous weapon. A firearm, whether loaded  
11 or unloaded or even temporarily inoperable, is a dangerous  
12 weapon.

13 Third, the defendant's act took place on July 30,  
14 2014 in Ramsey County, Minnesota.

15 If you find that each of these elements has been  
16 proven beyond a reasonable doubt, the defendant is guilty.

17 If you find that any element has not been proven beyond a  
18 reasonable doubt, the defendant is not guilty.

19 If you find that the defendant is guilty of this  
20 offense, you will have an additional question to decide on  
21 the verdict form. The question is: Did the defendant use a  
22 firearm in commission of this offense? If you find beyond a  
23 reasonable doubt that defendant used a firearm in commission  
24 of this offense, you will answer the question "Yes." If you  
25 do not find beyond a reasonable doubt that defendant used a

1 firearm in commission of this offense, you will answer the  
2 question "No."

3 Count 5, Assault in the Second Degree. The  
4 statutes of Minnesota provide that whoever assaults another  
5 with a dangerous weapon is guilty of a crime. The elements  
6 of Assault in the Second Degree are:

7 First, the defendant assaulted Commander Karsten  
8 Jeffrey Winger. An assault is an act done with intent to  
9 cause fear of immediate bodily harm or death in another.

10 Second, the defendant in assaulting Karsten  
11 Jeffrey Winger used a dangerous weapon. A firearm, whether  
12 loaded or unloaded or even temporarily inoperable, is a  
13 dangerous weapon.

14 Third, the defendant's act took place on July 30,  
15 2014 in Ramsey County, Minnesota.

16 If you find that each of these elements has been  
17 proven beyond a reasonable doubt, the defendant is guilty.  
18 If you find that any element has not been proven beyond a  
19 reasonable doubt, the defendant is not guilty.

20 If you find that the defendant is guilty of this  
21 offense, you will have an additional question to decide on  
22 the verdict form. The question is: Did the defendant use a  
23 firearm in commission of this offense? If you find beyond a  
24 reasonable doubt that defendant used a firearm in commission  
25 of this offense, you will answer the question "Yes." If you

1 do not find beyond a reasonable doubt that defendant used a  
2 firearm in commission of this offense, you will answer the  
3 question "No."

4 Count 9, Intentional Discharge of a Firearm. The  
5 statutes of Minnesota provide that whoever intentionally  
6 discharges a firearm under circumstances that endanger the  
7 safety of another is guilty of a crime.

8 The elements of Intentional Discharge of a Firearm  
9 are: First, the defendant intentionally discharged a  
10 firearm.

11 Second, the discharge of the firearm was under  
12 circumstances that endangered the safety of another person.

13 Third, the defendant's act took place on July 30,  
14 2014 in Ramsey County, Minnesota.

15 If you find that each of these elements has been  
16 proven beyond a reasonable doubt, the defendant is guilty.  
17 If you find that any element has not been proven beyond a  
18 reasonable doubt, the defendant is not guilty.

19 This concludes the Court's instructions about the  
20 particular issues in this case. We will now hear the final  
21 arguments by the attorneys. The law establishes the order  
22 if which each attorney is to argue. The State of Minnesota  
23 proceeds first, followed by the defendant and a rebuttal by  
24 the State. When the final arguments are finished, I will  
25 have some final instructions regarding your deliberations.

1           So if you would turn your instructions over so  
2 they don't distract you, or place them on the floor, we will  
3 turn our attention to the attorneys. And the State goes  
4 first. Mr. Prokopowicz.

5           MR. PROKOPOWICZ: Thank you, Your Honor. If I  
6 could just have a minute.

7           THE COURT: You may.

8           MR. PROKOPOWICZ: May it please the Court,  
9 Counsel.

10           Good morning, ladies and gentlemen. The evidence  
11 has been completed, the testimony has been received in this  
12 case; and later on today, at the conclusion of the final  
13 arguments and the final instructions to you by Judge  
14 Theisen, you're going to leave those chairs and you're going  
15 to go into that door (indicating) and you're going to begin  
16 your deliberations in this case. Some of you have done it  
17 before. Most of you have not. Whether you have the  
18 experience of being a juror or you don't, you may be sitting  
19 there wondering as you sit there right now, where do we  
20 start, where do we begin this process of deliberating in  
21 determining the guilt or innocence of Brian George Fitch,  
22 Sr.?

23           Representing the State of Minnesota, I hope to  
24 offer you some suggestions this morning on how you go  
25 through the evidence, how you analyze the law which you've

1           been given just recently by Judge Theisen. It's your choice  
2           how you deliberate. You'll be advised to select a  
3           foreperson to guide you in your deliberations, but then it's  
4           up to you. What I would suggest to you, in representing the  
5           State of Minnesota, is that you begin where Judge Theisen  
6           has already told you to begin, with the presumption of  
7           innocence.

8                     The defendant is presumed innocent of these  
9           charges, and it is the burden of the State to prove the  
10          defendant guilty beyond a reasonable doubt. It's a burden  
11          that Mr. Dusterhoft and myself accepted when we began this  
12          case and standing here this morning in front of you to tell  
13          you that we have met that burden. We have proved Brian  
14          George Fitch, Sr. guilty of all of the offenses beyond a  
15          reasonable doubt.

16                    Before you begin your deliberations then, make  
17          sure you understand fully what proof beyond a reasonable  
18          doubt means, ladies and gentlemen. Judge Theisen has just  
19          told you in her recent instructions. Proof beyond a  
20          reasonable doubt means such proof as men and women would act  
21          upon in their most important affairs. A reasonable doubt is  
22          a doubt based upon reason and common sense. It does not  
23          mean a fanciful or capricious doubt, nor does it mean beyond  
24          all possibility of doubt. Proof beyond a reasonable doubt  
25          isn't something that you can put into a mathematical



1 equation. Two plus two doesn't always equal four when you  
2 talk about the lives of people and the conduct that occurred  
3 in this particular case.

4 And act upon as you would in your most important  
5 affairs. We have all had them. It may be whether to change  
6 jobs, move to a new community or to a new location, a change  
7 in life. It may be having a major surgery. It may be  
8 getting married. Perhaps the most important decision of  
9 all, whether to have children. When you approach those  
10 decisions, those important decisions in your lives, ladies  
11 and gentlemen, what you do is you look at all the  
12 information that you have in front of you; you may want  
13 more, but you take the information that you have in front of  
14 you and you weigh it and you analyze it and you move forward  
15 with that decision. Even though you may have lingering  
16 doubts about, is this a good move for myself and my family?  
17 Am I prepared to live the rest of my life with this  
18 particular person? Would I be a good mother or a good  
19 father? And we sometimes speculate and we wonder, well,  
20 what if, what if this? But yet we move ahead because at  
21 that particular point in time, at that moment, based on the  
22 information that we have in front of us, we are convinced  
23 it's the right decision; and that's what proof beyond a  
24 reasonable doubt is. It's that level of confidence that you  
25 must have in this case.

1           Also understand the difference between direct and  
2           circumstantial evidence. Judge Theisen has also advised you  
3           on that. Direct evidence is the type of evidence that you  
4           experience through your sight and through your sound. You  
5           actually see the event occur. And then there's  
6           circumstantial evidence, which you don't experience  
7           directly, but from all the other evidence in the case you  
8           can reasonably and rationally infer that a particular fact  
9           exists.

10           Simple example is when you go to bed at night and  
11           there's no snow on the ground. You wake up, there's snow on  
12           the ground. You can reasonably and rationally infer that it  
13           snowed that night. Now, that's a simple explanation. But  
14           what is important is that Judge Theisen has told you the law  
15           does not prefer one form of evidence over the other. A fact  
16           in a case can be proved by direct evidence; it can be proved  
17           by circumstantial evidence; it can be proved by both.

18           Now, that example I gave you was relatively  
19           simple. In this case it's a little bit more complex because  
20           no one identified Brian George Fitch in the green Grand Am;  
21           but is there other evidence, direct evidence and  
22           circumstantial, in this case from which you can reasonably  
23           and rationally infer that the defendant was in fact in the  
24           green Grand Am? Make sure you understand that and apply it  
25           correctly, the difference between direct and circumstantial

1 evidence.

2 Now, you've heard a lot of witnesses testify in  
3 this case. Some may have raised an eyebrow with you. Some  
4 you're confident in. But you must understand how you  
5 evaluate the testimony and the evidence that you have  
6 received -- or that has been received. And again, Judge  
7 Theisen has provided you with some instructions in that  
8 regard. The interest or lack of interest in the outcome of  
9 the case; the relationship of a witness to the defendant and  
10 to the parties; the reasonableness or unreasonableness of  
11 their testimony in light of all the other evidence in the  
12 case; their ability and opportunity to know and remember the  
13 facts; their manner, appearance, frankness and sincerity;  
14 their age and experience; other factors that believe -- bear  
15 on their believability and weight. But in the last  
16 analysis, ladies and gentlemen, in the last analysis, as  
17 Judge Theisen has told you, is rely on your life  
18 experiences, your good judgment and your common sense. And  
19 that's what the State is asking for you as you begin to  
20 review the evidence in this particular case, that you look  
21 at all the evidence, the totality of the evidence; and you  
22 use your life experience, your good judgment and your common  
23 sense; and it will lead only to one true and just  
24 conclusion.

25 You've just been instructed on a lot of crimes, a

1 lot of elements, nine of them. How do you begin to sort  
2 that out, where do you start? I would suggest to you that  
3 you begin by doing this. You take the first degree murder  
4 charge, you take the possession of a firearm by an  
5 ineligible person, and you put them to one side of the  
6 table, because those are the Dakota County charges; and then  
7 you have the attempted murder, the assault in the second  
8 degree and intentional discharge of a firearm, and you put  
9 them to the other side of the table; those are the Ramsey  
10 County charges.

11 And then begin with the Dakota County charges.

12 And I would suggest to you that you might want to begin with  
13 the ineligible person to possess a firearm. Why? Because  
14 if you find the State did not prove beyond a reasonable  
15 doubt that Brian George Fitch was in that -- was not in that  
16 Grand -- was in that Grand Am and that he did not possess  
17 that firearm, don't even go to the murder charge. You're  
18 finding him not guilty of both. But that's not what the  
19 evidence suggests in this particular case.

20 But once you've decided those particular offenses,  
21 then go to the other side of the table and begin to look at  
22 the Ramsey County offenses. And again, I would start with  
23 the intentional discharge of a firearm; because if you find  
24 that the State did not prove beyond a reasonable doubt that  
25 offense, there's just no sense going to the assault 2 and

1 the attempted murders because you have basically found that  
2 there was no gun, that he didn't discharge that gun in any  
3 way, shape or form. And then work your way through the  
4 elements. The elements of murder and attempted murder are  
5 virtually the same. The only difference is a death occurred  
6 on the murder. In the Ramsey County attempted murder  
7 charges, you need to find that there's a substantial step  
8 towards and more than mere preparation.

9 Once you understand that, ladies and gentlemen,  
10 and you understand the elements of the crimes and your  
11 obligations, you begin to review the evidence. There's a  
12 lot of evidence, over fifty-some witnesses, a-hundred-some  
13 exhibits were presented during the five or six days of this  
14 particular trial. Don't worry, I'm not going to go through  
15 all of it with you this morning; but I want to hit the  
16 highlights for you so you understand fully the State's case  
17 and how it plays out and how it makes logical sense,  
18 reasonable sense of what happened on July 30th of 2014.

19 This trial began with the testimony of Sergeant  
20 Eric Petersen. Through Sergeant Eric Petersen's testimony  
21 you learned that Scott Patrick was much to many; husband,  
22 father of two teenage daughters, friend, a licensed peace  
23 officer in the State of Minnesota. A licensed peace officer  
24 who for 19 years served the citizens of Mendota Heights; a  
25 short stint as an investigating officer, but primarily as a

1 patrol officer, responding to calls for assistance,  
2 enforcing the traffic laws and other laws in the City of  
3 Mendota Heights, a duty and responsibility to protect and to  
4 serve.

5 You heard from Sergeant Petersen the general  
6 duties and responsibilities of a patrol officer in the City  
7 of Mendota Heights and how they would operate a traffic  
8 stop. They would call in when they saw the violation occur;  
9 how they would log into the computer and record the  
10 necessary data as far as the vehicle and the stop and the  
11 time of the stop; and when they exit the car, how they will  
12 log in the time and relay to the dispatch center when they  
13 would exit that car. And you heard from Sergeant Petersen  
14 that when they come across an individual who has an  
15 outstanding warrant for their arrest, if they know it, they  
16 call for assistance; but if they don't know it and later  
17 find out, the person is taken into custody, the car is  
18 impounded and it is searched. You heard from Sergeant  
19 Petersen that Scott Patrick began a shift at approximately  
20 7:30 a.m. on July 30th of 2014.

21 You know, you saw the videos, the interior videos  
22 and the exterior videos, the interior video and exterior is  
23 backed up a minute in time as far as the video portion of  
24 it; the audio kicks in right when the lights are activated,  
25 by the flipping on of the lights, the emergency equipment.

1           You know that at approximately 12:20 Sergeant  
2           Patrick -- or excuse me -- Officer Patrick was following a  
3           green Grand Am as it traveled northeast on Dodd Road in the  
4           City of Mendota Heights. You saw it on the video. And he  
5           continued to follow it as it passed into the City of West  
6           St. Paul, the neighboring city. In fact, you could even see  
7           the sign of "West St. Paul" pass by on the camera. It was  
8           shortly after that, and you say saw it in the video, that  
9           Officer Patrick put on his emergency lights and pulled the  
10          vehicle over near the intersection of Dodd and Smith.

11          That vehicle, a green Grand Am, a dent in the  
12          rear, the license plate number (indicating), that's what  
13          Officer Patrick saw when he stopped that vehicle. He did  
14          not know who the driver was. The vehicle had registered to  
15          someone else. You now know, based on Officer Patrick's  
16          computer screen. That the vehicle registered to a Laurie  
17          Pocock at 2474 Pond Circle East, its license plate number  
18          SED 283. You have the times at 7-30, 2014 at 12:19:54, when  
19          the record checks are being run. What that tells you is the  
20          starting time, a starting time for that particular stop.  
21          12:20 approximately on July 30th, 2014.

22          You witnessed and you observed on the video cam as  
23          Officer Patrick attempted to get his exterior mic on but was  
24          unable to do so. You watched as Officer Patrick exited his  
25          squad car. You immediately heard shots, one shot, two

1 shots, three shots. As you looked at the exterior, you saw  
2 that as Officer Patrick was approaching the rear bumper of  
3 that green Grand Am he was shot; again, not once, not twice,  
4 three times. As he fell to the ground. By the driver of  
5 that green Grand Am who reached out the window with the gun  
6 and murdered Officer Scott Patrick at a range of 10, maybe  
7 12 feet, 15 feet at the outside.

8 Ladies and gentlemen, one of the elements that  
9 you're going to have to prove in this case is that the  
10 person who fired that gun from the green Grand Am acted with  
11 the intent to kill Officer Patrick. As Judge Theisen has  
12 told you, intent is a process of the mind. It can't be  
13 proved by direct evidence. You must rely on circumstantial  
14 evidence to figure out what a person was thinking. And what  
15 the State is asserting in this case is that when you fire a  
16 9-millimeter handgun at a range of 10 to 12 feet with a red  
17 laser dot sight not once, not twice, but three times, you  
18 are acting with the purpose of causing that death; or in the  
19 alternative, as Judge Theisen has told you, you have reason  
20 to believe or you know that your act will have that result;  
21 that result being death.

22 You heard from the medical examiner in the case:  
23 Officer Patrick, three gunshots; one to the leg that went in  
24 and out of the leg; one to the abdomen that pierced the  
25 aorta causing Officer Patrick to bleed profusely; and one



1 shot to the head, which killed him almost instantly. You  
2 heard the causes of the death, the shot to the abdomen, the  
3 shot to the head (indicating); the manner of death was a  
4 homicide. And you also heard Dr. Froloff indicate he  
5 removed two bullets from the body of Officer Patrick and  
6 that the one that went through the leg was quite probably  
7 likely remaining at the scene.

8 The scene, ladies and gentlemen, at the beginning  
9 of the first day or two of this trial you heard a lot of  
10 people come in and talk about what had occurred. This  
11 happened at 12:20 in the afternoon, on a busy intersection,  
12 and there were a number of witnesses.

13 You heard from Jennifer O'Keefe who indicated that  
14 she was traveling on Smith (indicating) and turning onto  
15 Dodd Avenue, and was almost right at Officer Patrick and the  
16 green Grand Am -- the squad car and the green Grand Am when  
17 she heard the three shots. You heard how she immediately  
18 stopped her car; and you observed and watched her in the  
19 blue outfit, nurse's scrubs, attempt to revive Officer  
20 Patrick. It was futile; he had already passed. She  
21 described, she provided a description to you of the green  
22 Grand Am and how it had sped through the intersection of  
23 Dodd and Smith.

24 And you heard other witnesses. You heard Amy  
25 Stickler -- oh -- who was parked (indicating) at the

1 intersection here; and you heard how she had seen the  
2 shooting and she saw the green Grand Am proceed through the  
3 intersection northeast on Dodd Road. She was able to  
4 describe the vehicle and provide a description of the  
5 driver.

6 And you heard from Tiffani Barber, Natalie Hinz,  
7 other witnesses who caught a glimpse of the driver. And  
8 what did you hear, ladies and gentlemen? A wide variety of  
9 descriptions. You heard that the driver was a white male.  
10 You heard that there were two people in the green Grand Am.  
11 One person described the driver as light-brown skinned.  
12 Early 20s was thrown out. 30s was thrown out. A baseball  
13 cap was thrown out. Blond hair was thrown out. Other  
14 witnesses said he was bald. He was sitting up. He was  
15 slouching down. A wide variety of descriptions. People  
16 trying to do their best in a very chaotic moment, trying to  
17 get the information about what they had saw. How do you  
18 weigh that? You can't ignore it. It was testified to. But  
19 what emphasis do you put on it? What weight do you give to  
20 that?

21 Ladies and gentlemen, you recall the instruction  
22 from Judge Theisen when reviewing that particular testimony  
23 and evidence and how you weigh the evidence and the  
24 witnesses, and what she has told you is that one of the  
25 factors is the ability and opportunity to know and remember

1 and relate the facts. You heard their testimony, ladies and  
2 gentlemen. It was a passing glimpse. A split-second they  
3 observed that driver, and most of them just observed just  
4 the profile of the driver. And given everything that  
5 occurred and how quickly it occurred, probably not so  
6 surprising, your common sense, your good judgment and your  
7 life experiences, that you would have a mixture in the  
8 descriptions provided by the witnesses. But they were doing  
9 their best to give that information in relaying it so the  
10 police departments could get it out to the other officers  
11 who were searching for that vehicle.

12 And where did that green Grand Am go? What  
13 information do you have? What have you learned about where  
14 that green Grand Am went after it went through the  
15 intersection? What you have learned, ladies and gentlemen,  
16 that the green Grand Am went through northeast on Dodd  
17 Avenue; and it continued on Dodd Avenue and into the  
18 40 acres area of West St. Paul (indicating), this square  
19 area of West St. Paul.

20 Where it was seen by William Hanson, who was  
21 bringing his father to a medical appointment. The green  
22 Grand Am was going so fast as he proceeded into the  
23 intersection, it almost T-boned him, and he had a few choice  
24 words for the driver. He described the driver as one person  
25 in the vehicle, one driver who he believed was bald.

1           And you heard Investigator Swenke, as the vehicle  
2           proceeded down Dodd Road, it's picked up on a surveillance  
3           camera at Gallaghers Bar further down on Dodd Road. And you  
4           heard from Mr. Sabinske and Mr. Bohmer, two people who were  
5           working at Humboldt High School, were on their lunch break  
6           about noon, Mr. Sabinske had gone to a gas station, picked  
7           up his lunch and returned back, and was parked in their  
8           vehicles outside of the school on Elizabeth Street, at about  
9           12:15, when they observed a green Grand Am Pontiac type  
10          vehicle speed by them at a high rate of speed, 70 plus miles  
11          an hour. It took air as it went by them and it came down  
12          causing sparks and scratches; the vehicle was going that  
13          fast. It blew through stop signs and was immediately within  
14          a short time out of sight. They were parked on Elizabeth  
15          Street between Humboldt and Gorman (indicating), consistent  
16          with the vehicle coming down Dodd and turning and beginning  
17          to work its way over to Robert Street.

18                 And you have learned, ladies and gentlemen, that  
19          St. Paul police officer Chou Yang eventually located that  
20          vehicle a few hours later in the backyard of 667 Robert  
21          Street (indicating), partially covered by a tarp. You have  
22          heard testimony from police officers, investigating  
23          officers, Investigator Cook and Investigator Swenke and  
24          others, that the distance, the time it takes to go from Dodd  
25          Road over to Elizabeth and over to Robert Street, obeying

1 all the traffic laws, takes about five minutes. Takes even  
2 shorter when you're going 60, 70 miles an hour and blowing  
3 through stop signs. The shooting you know occurred at  
4 12:20, and it's reasonable and rational for you to assume  
5 that that green Grand Am arrived at 667 Robert somewhere  
6 right around 12:25 p.m. And that's where it stayed and  
7 that's where it remained.

8 During the course of the trial, you heard a little  
9 bit about the defendant. Was the defendant the one who was  
10 driving that green Grand Am? What you learned of the  
11 defendant came from friends and associates and the  
12 girlfriend, Taya Moran, who testified the first or second  
13 day of the trial. And you learned that Mr. Fitch drives  
14 multiple cars, a green Grand Am; she described one of them a  
15 white kind of a Chevy Caprice, looked like a police car.  
16 She recalled the police light inside the car.

17 She provided officers multiple phone numbers  
18 associated with Mr. Fitch. They had a romantic  
19 relationship. They were sexually intimate. At times Mr.  
20 Fitch would stay at her apartment and -- with her mother in  
21 the City of Oakdale.

22 She described on occasion seeing two guns in Mr.  
23 Fitch's possession. One she described as a black gun. She  
24 didn't like it. She's not too familiar with guns. She  
25 thought it was a BB gun or at least was under the impression

1 it was a BB gun; but she calls -- recalls a black handgun  
2 with a laser sight attached to the bottom of it. And she  
3 also recalls a smaller gun, silver, small, would fit in the  
4 palm of a hand, with a pearl handle, colored handle. And  
5 she didn't like Mr. Fitch possessing those guns, she didn't  
6 like guns; but she saw them.

7 And you also heard from Taya Moran that a few days  
8 prior to July 30th she had gotten into a dispute with Mr.  
9 Fitch; that he wasn't allowed in her mother's apartment  
10 unless someone was home, either she was there or her mother  
11 was there; and that she was concerned that Mr. Fitch may  
12 come into the apartment without her permission when she  
13 wasn't there. She was so concerned, ladies and gentlemen,  
14 that she contacted the Oakdale Police Department and  
15 provided them a telephone number and asked them to call the  
16 defendant to tell him to stay away from the apartment, to  
17 not go there. And you heard Oakdale police officer Groppoli  
18 testify in front of you and confirm that he did in fact  
19 receive that phone call two days before July 30th, and that  
20 he made that phone call; the person indicated that he wasn't  
21 Brian Fitch, although the officer said he advised that  
22 person anyway to stay away from the apartment.

23 And you heard from Taya Moran about July 29th of  
24 2014, the evening before the murder of Officer Scott  
25 Patrick, how they spent -- she spent the night with Fitch at

1 the residence of Laurie Pocock over on Pond Circle East in  
2 the City of Mendota Heights. And she described for you and  
3 testified to a conversation, a lecture, an argument, that  
4 she had with Mr. Fitch that night. She recalled it was  
5 about her calling the police a few nights before. He was  
6 upset with her. He indicated to her that he believed he had  
7 fallen off the radar and by her calling that was no longer  
8 the case. She had ruined his life. That if he was stopped  
9 by a police officer, he would shoot the cop. That's what  
10 the defendant said the night before he shot Officer Patrick.

11 You have other information about the defendant  
12 through Chad Mitsch. You know now on July 30th, 2014, he  
13 was on supervised release with specific conditions to keep  
14 his super -- his officer informed of his whereabouts, to  
15 remain law abiding, to not possess a firearm; that in June  
16 there was a DOC, Department of Corrections warrant out for  
17 his arrest that was still in effect on July 30th of 2014.

18 You learned from some of his friends and  
19 associates that Mr. Fitch would stay in a lot of residences;  
20 he would use multiple cars in order to avoid detection; he  
21 would use multiple phones. Interesting enough, when he  
22 bought those cars and used those cars, he never changed the  
23 registration into his name. The phones he used had no  
24 subscriber information attributed to him.

25 You know -- you heard from various people that he

1 was aware of the active DOC warrant for his arrest on  
2 July 30th, and what Taya Moran and others have provided for  
3 you is the motive. Even though we're not required, ladies  
4 and gentlemen, to prove to you what the motive was, it's  
5 reasonable and rational for you to assume that the motive  
6 for shooting Officer Scott Patrick on July 30th was to avoid  
7 apprehension, and the warrant to be executed; that was the  
8 reason he had to get away as fast as he could, with no  
9 trailing police officers with red lights and sirens; and  
10 that's why he had to take that gun, he had to point that gun  
11 out the window and he had to fire it once, twice, three  
12 times.

13 You heard from John Lynch and Laurie Pocock who  
14 confirmed that Brian Fitch a couple of times a week would  
15 stay at their residence overnight, that he had a room  
16 upstairs and that he was there on the evening of July 29th;  
17 as was the green Grand Am, which he appeared to have arrived  
18 in. Laurie Pocock said she observed a green Grand Am parked  
19 across the street from her residence that evening.

20 Laurie Pocock also provided you some additional  
21 testimony about what happened on July 30th of 2014. What  
22 she told you, ladies and gentlemen, is that she went to the  
23 bank, she had some errands at the Wells Fargo Bank in West  
24 St. Paul; and admitted into evidence was the security video  
25 of that transaction which shows that on July 30th, 2014, at



1 10:29 a.m. she was at the teller of that bank. She  
2 indicated she was at that bank for about 10 to 15 minutes  
3 (indicating). She told you she then went about a block away  
4 to get her car washed and that took about 10 to 15 minutes.  
5 We're now at 10:40, 10:45. And from there she drove home.  
6 It took her a little longer because there was road  
7 construction on Delaware and it took her about another 10 to  
8 15 minutes. And now, ladies and gentlemen, we're at or near  
9 about the 11 o'clock hour.

10 And she testified to you that when she got home  
11 Brian Fitch -- to her home on Mendota Heights on Pond Circle  
12 East Brian Fitch was there; he was talking to John in the  
13 garage and she walked by them. And she told him about  
14 Delaware being under construction and don't go down  
15 Delaware, it's all backed up. And then she went into the  
16 house; likely, reasonably, rationally could conclude  
17 sometime after 11 o'clock. That she spent sometime in the  
18 house, and then Brian Fitch walked in. Went upstairs, and  
19 they met upstairs. And you recall the testimony the  
20 defendant was changing his clothes and putting on his  
21 clothes and they were engaged in a conversation about what  
22 he looked like and how he looked. She even knew about the  
23 black Batman T-shirt, which was found on Brian Fitch later  
24 that day when he was arrested. And how she commented, it's  
25 going to be a black day. How prophetic.

1           We can assume reasonably and rationally that it  
2           was sometime around 11:15 or 11:20, whenever this  
3           conversation occurred, that Brian George Fitch, Sr. was  
4           still at East Pond Circle, at the house of Laurie Pocock.  
5           She also told you -- she also told you that Brian George  
6           Fitch indicated to her that he was going to leave the  
7           residence and go to the west side, the west side which she  
8           took to mean the west side of St. Paul.

9           Ladies and gentlemen, there have been two numbers  
10          you heard during this trial associated with the defendant,  
11          Brian George Fitch. That first number, 651-442-7144. West  
12          St. Paul Police Department Item Number 6 was recovered by  
13          Investigator Wayne, the Dakota County Sheriff's Department  
14          during the search at the Pond Circle residence. It was  
15          taken into custody, offered into evidence or put into the  
16          evidence locker, and subsequently transported to the Bureau  
17          of Criminal Apprehension; where they did extractions on that  
18          phone and they were able to determine that 651-442-7144 that  
19          was found in the bedroom where Brian Fitch and Taya Moran  
20          spent that night is the same phone number that Officer  
21          Groppoli called. And that phone for some reason, despite  
22          hundreds and hundreds of calls, was never used after  
23          July 28th in the early evening hours, right about the time  
24          Officer Groppoli contacted or believed to contact Mr. Fitch.

25                 A new number arose shortly thereafter, and you

1 heard the testimony of the Sprint custodian of records that  
2 all of a sudden phone number 612-462-0309 was activated at  
3 around 6-ish on July 28th of 2014, about the same time the  
4 other one stopped being used. There was no subscriber  
5 information. It was a prepaid phone. A phone that has  
6 never been recovered in this case, but a phone that tied --  
7 a phone number that Taya Moran, Laurie Pocock, John Lynch  
8 and others indicated they would use to contact the  
9 defendant, Brian Fitch.

10 Now, because the phone was never recovered doesn't  
11 mean that you can't get access. And you heard the Sprint  
12 custodian of records come in here, Mr. Clark, and testify  
13 that they were able to collect data on that particular  
14 phone, indicating the phone calls that were made; and you  
15 have as an exhibit those phone calls, especially those  
16 between 10:00 a.m. and the time of Officer Patrick's death  
17 at 12:20. Approximately 27 phone calls were made, a couple  
18 of text messages were also sent on that particular phone.  
19 They were able to take this information that they received  
20 from Sprint; and you heard the testimony of Agent Bill  
21 O'Donnell of the BCA who took that information, who took  
22 that information and was able to determine that those cell  
23 -- that that phone bounced off, was collected by Tower 1544.  
24 And you recall the testimony of the Sprint custodian of  
25 records of what happens when you make a cell phone call.

1 The cell phone goes to the strongest signal which is usually  
2 the closest tower. 1544, sector 1, that's where that --  
3 those phone calls went, and including the last phone call at  
4 11:55:25, a phone call that bounced off Tower 1544, sector 1  
5 (indicating). And where is that, ladies and gentlemen, that  
6 tower in connection to the Pond Circle address? Agent  
7 O'Donnell provided that information for you. The Pond  
8 Circle East, the address was wrong, it belonged to the house  
9 next door, as Lieutenant Swenke cleared up for you. It's  
10 located right here, Tower 1544, less than a mile away  
11 (indicating). The other towers are well beyond that range.

12 The evidence, circumstantial evidence, what you  
13 can reasonably and rationally conclude is that at 11:55,  
14 closer to the noon hour, as it approached the noon hour,  
15 Brian George Fitch, using that cell phone, was in the  
16 vicinity, if not at, in the vicinity of the Pond Circle East  
17 address.

18 Now, you heard from Lieutenant Swenke that there  
19 -- if he was in fact going to 667 Robert Street or if he was  
20 going to the west side, there are a number of ways that he  
21 could have traveled to the west side. One of the ways was  
22 to go over to 110 and connect up with Highway 52, which is  
23 off the map and runs north/south into St. Paul, and then cut  
24 back over to Robert Street to the west side. But as  
25 Investigator Swenke said, that's really kind of out of his

1 way because you have to go way out and then go down -- north  
2 toward St. Paul and then cut over. It wasn't the likely,  
3 the most direct route.

4 Another route was to go up to Delaware Avenue, cut  
5 out over to 110, to Mendota Heights Road, and pick up Robert  
6 Street, and take Robert Street on south into the west side  
7 of St. Paul (indicating). But as Investigator Swenke told  
8 you, Robert Street is one busy street, Target and Wal-Mart  
9 and Menards and virtually every fast food restaurant you can  
10 think of. Every intersection virtually has a stoplight.  
11 It's crowded heavily with traffic and heavily patrolled by  
12 police officers. Something the defendant would know and  
13 certainly wouldn't take if he's trying to avoid detection  
14 and apprehension and risk the possibility of being stopped.

15 Another possible route would be to leave and go to  
16 Delaware Avenue and go north, northeast on Delaware Avenue,  
17 which would carry him in eventually up to Dodd and to the  
18 west side. Problem with that route was Laurie Pocock had  
19 just told him that Delaware Avenue up by Marie was under  
20 construction and there were significant delays to getting up  
21 to that route.

22 And what's the final route? The natural route  
23 would be to take and go over to Dodd avenue -- to Dodd Road  
24 and turn north, northeast, and proceed up Dodd Road, the  
25 intersection of 110, stoplight there, up to Marie Avenue.

1 Lieutenant Swenke said there's a four-way stop. And the  
2 next stop is Smith and Dodd (indicating). And it was  
3 likely, ladies and gentlemen, because you didn't see on that  
4 video any stop signs, any stoplights or any intersections,  
5 it was likely and reasonable and rational for you to  
6 conclude that Officer Patrick came into contact with that  
7 green Grand Am and the defendant somewhere north of Marie  
8 Avenue on Dodd. The natural route, the expected route you  
9 would assume him to take based upon what Laurie Pocock had  
10 told him, based upon Robert Street, the use of Robert  
11 Street. Reasonable and rational conclusion with your life  
12 experiences, your good judgment and your common sense.

13 The investigation turned to 667 Robert Street  
14 after the Officer discovered the vehicle in the backyard of  
15 that residence. And at 667 Robert Street, you heard from  
16 Katie Oney and Jesse Charles; and they told you that Brian  
17 Fitch had been in contact with them that day, was looking to  
18 borrow Jesse Charles's mother's car, a blue Hyundai Veracruz  
19 that he needed that day to do some traveling. That he  
20 called them and that he arrived at the residence. Katie  
21 Oney indicated that when he arrived, she first found out  
22 about it when Jesse Charles stuck his head in the door and  
23 said, oh, Brian is here; and she saw him a few seconds  
24 later, as Jesse Charles was going to pick up his mother.  
25 And Jesse Charles would testify that he recalls going to

1 pick up his mother right around noon; and as he left the  
2 backdoor and went and drove down the driveway in the blue  
3 Hyundai, he saw Brian Fitch pulling up into the driveway but  
4 he had to back up and allow Mr. Fitch to pull in. And then  
5 he proceeded to go down and pick up his mother at the St.  
6 Paul Hotel, who had just gotten off of work. Returned home.  
7 There was a discussion, he testified, about how Brian Fitch  
8 wanted to put that green Grand Am in the garage. There was  
9 too much junk, too much stuff in the garage, and so he  
10 helped Brian Fitch tarp -- put a blue tarp on.

11 Reasonable and rational for you to conclude that  
12 that was being done to hide the location of the green Grand  
13 Am, the green Grand Am that had just been involved in the  
14 murder of a police officer only a few minutes before that.

15 He wanted that blue Hyundai Veracruz. He was  
16 willing to pay two car payments, \$800, to borrow a car for a  
17 matter of a few hours. Jesse Charles said he was driving to  
18 pick up some drugs. \$800. A unreasonable sum; but not if  
19 you're an unreasonable man, desperate to get away, desperate  
20 to avoid detection, who would be willing to pay anything to  
21 get away. He needed to remove himself from that green Grand  
22 Am. He needed to switch cars registered to another person,  
23 Karen King.

24 Now, as you may have likely guessed, there's a  
25 little bit of a problem with Katie Oney and Jesse Charles's

1 version of events because you know that Karen King, Jesse's  
2 mother, got checked out at about 11:54; and according to the  
3 security guard she left, walked out at about 12:02, and  
4 Karen King testified that her son was right there, picked  
5 her up; took about five to seven minutes to drive home. Its  
6 reasonable and rational for you to assume that they arrived  
7 home sometime right around 12:10. But what Karen King  
8 didn't tell you -- or what she did tell you is that when she  
9 pulled into the backyard of that residence she doesn't  
10 recall seeing the green Grand Am. Now, she couldn't say if  
11 it was there or not. She didn't recall seeing it, ladies  
12 and gentlemen, because there are other cars, a lot of other  
13 cars there, is what her potential reason is. She didn't see  
14 it, ladies and gentlemen because it wasn't there. That's --  
15 the car, where it was parked and where it was discovered by  
16 Officer Yang (indicating), the green Grand Am, there was  
17 little room to park multiple cars in that backyard.

18 You heard Lindsey Garfield, the BCA crime scene  
19 person, describe the car in the backyard, half the size of  
20 this courtroom. Easy and rational, you would think that  
21 Karen King would have observed the green Grand Am there,  
22 certainly beginning the discussion that Brian Fitch was  
23 going to use her car. But she didn't see it there.

24 And when she walked into her house at 12:10 or  
25 12:10, 12:11, 12:12, she walked into the kitchen, they lived



1 on the main floor, Brian Fitch -- didn't see Brian Fitch in  
2 the backyard, didn't see Brian Fitch in the kitchen. She  
3 walked down the hall to her bedroom and -- in which she  
4 takes the living room. She saw Katie Oney there, but didn't  
5 see Brian Fitch. Towards her granddaughter's bedroom to the  
6 right, didn't see Brian Fitch. Didn't she Brian Fitch when  
7 she went into her room and began to work on her computer.  
8 It was a short time later, was the first time that she saw  
9 Brian Fitch stick his head in the door.

10 Ladies and gentlemen, it's reasonable and rational  
11 for you to conclude that Brian Fitch arrived at about 12:25  
12 p.m., but not only just in the testimony of Karen King. The  
13 vehicle, the tarp (indicating), if that car did in fact  
14 arrive at 12:10 or shortly before 12, if you want to  
15 believe, give credit to Jesse Charles and Katie Oney, how do  
16 you explain that at 12:20 Officer Scott Patrick was  
17 following that vehicle northeast on Dodd Road, and it was  
18 stopped at the intersection? It could not have been, ladies  
19 and gentlemen, at 667 Robert Street at 12:10 or 12 o'clock,  
20 as Katie Oney and Jesse Charles suggest. Unless he got back  
21 into the car, drove back over to Mendota Heights, got on  
22 Dodd Road and then drove. That car wasn't there, ladies and  
23 gentlemen, as Jesse Charles and Katie Oney suggest it was.

24 And when you -- when you review and you listen to  
25 Jesse Charles and Katie Oney's testimony, remember the

1 instructions of Judge Theisen regarding how to evaluate  
2 testimony, the ability and opportunity to know, remember the  
3 facts, and remember that Katie Oney had been awake for 14  
4 days on a meth binge. Jesse Charles had been up all night  
5 using meth. Their manner and their appearance as they  
6 testified on the witness stand, the relationship to the  
7 parties. Brian Fitch was their source of methamphetamine  
8 and they testified to and that very day he was going out to  
9 get methamphetamine for Jesse Charles. The reasonableness  
10 and unreasonableness of their testimony. That car was on  
11 Dodd Road. Your life experiences, your good judgment and  
12 your common sense, ladies and gentlemen, take you to the  
13 reasonable and rational conclusion that that car came after,  
14 the green Grand Am came after Karen King arrived at the  
15 residence.

16 What happened then? At some point in time Brian  
17 Fitch left 667, and what happened in that afternoon? Again  
18 you'll have the exhibit that you'll be able to take back  
19 into. Mendota Heights police officer Scott Patrick was shot  
20 at 12:20 (indicating). There was an incoming call at 12:55.  
21 There was an outgoing call at 12:56:29, and that was the  
22 last phone call made on that phone. If you continue to look  
23 at the second page of those phone numbers, no phone  
24 connection. What that tells you is that Brian Fitch, it's  
25 reasonable and rational for you to conclude that he was

1           aware of tracking; that's why he used phones and that's why  
2           he ditched that phone.

3                       You have the testimony of Luke Hanegraaf, Agent  
4           Luke Hanegraaf, who indicated to you that he talked to a  
5           confidential informant who said that sometime that afternoon  
6           Brian Fitch showed up at a residence in St. Paul. He was  
7           collecting debts. He was gathering money.

8                       And you heard from Kelly Hardy and she talked to  
9           you how -- or described to you how Brian Fitch came over to  
10          her house over in Maplewood and made arrangements for her to  
11          take her brother's car along with a Robyn Blue and to go to  
12          an apartment, a residence over in Oakdale, to pick up the  
13          white Caprice that had the police light. And she testified  
14          as to how she did that that afternoon; and that as she drove  
15          out of the parking -- the apartment parking lot, the  
16          defendant pulled in front of her and she followed that white  
17          Caprice -- or followed Brian Fitch, who had now transferred  
18          the car to the blue Hyundai Veracruz, to the area of Third  
19          Street and White Bear on the east side of St. Paul, where  
20          they parked that vehicle and left it. Third and White Bear,  
21          Third and White Bear, that's the vehicle, it was recovered a  
22          few days later by the St. Paul Police Department in the  
23          general vicinity where Kelly Hardy said they left it; an  
24          area in the vicinity, according to Lieutenant Swenke, within  
25          two miles of 34 West Sycamore approximately in St. Paul.

1           It's reasonable and rational, ladies and  
2 gentlemen, for you to conclude that this white Caprice  
3 (indicating) was eventually going to be the getaway car.

4           The phone had been ditched. You heard Kelly Hardy  
5 talk about the number of places they went, to Jimmy John's,  
6 couple -- to Dairy Queen, to a bunch of residences. Safe to  
7 assume that he was doing the same thing that the  
8 confidential informant said, he was collecting money during  
9 that time period.

10           Now, Kelly Hardy said there was very little phone  
11 use going on, her battery was dead. But recall the  
12 testimony of Investigator Casey Kohn. The recovery of the  
13 phone call or the phone from Kelly Hardy's purse, the  
14 Smartphone HTC that Investigator Swenke took from the purse,  
15 gave to Casey Kohn, who brought it to the BCA, who extracted  
16 the information from that phone because they actually had  
17 it. He gave that information to Casey Kohn, which was  
18 viewed by Casey Kohn and Investigator Swenke, and what did  
19 it show? That in the afternoon and early evening of  
20 July 30th, 2014, a number of searches were being conducted  
21 of media, KSTP, KARE 11, WCCO; searches were being entered  
22 into, officer shooting, West St. Paul, and they monitored  
23 the developments of the investigation.

24           It's reasonable and rational for you to assume  
25 that that phone was in fact in her purse and that's what

1 they were doing as well as they travelled around the St.  
2 Paul area, the metropolitan area, they were monitoring the  
3 developments of the investigation as reported by the media.  
4 They knew what was going -- they knew where the trail was  
5 leading.

6 Interesting enough, on the white car, it was  
7 stipulated to and you can read the stipulation that the  
8 parties agreed that that car was in fact sold to Brian Fitch  
9 by Melissa Kramer; although he never registered it again in  
10 his name. But again that was his MO to avoid detection.

11 Then the investigation takes you to 34 West  
12 Sycamore. And you heard a number of people who were present  
13 at 34 West Sycamore. Investigating officers were led there  
14 by an informant who indicated that's a place that he was  
15 known to associate, and they set up surveillance on it. And  
16 the officer testified how they observed the blue Hyundai  
17 Veracruz parked at that particular residence; and the call  
18 went out to investigating officers; and they all came, all  
19 of them. As they proceeded to set up at an abandoned Dairy  
20 Queen nearby, they proceeded to set up how were they were  
21 going to enter this particular residence. They began to  
22 gather the SWAT.

23 And you heard from several people who were present  
24 there, entered the residence; and you heard from Jacob Hayes  
25 who indicated that he had been at that residence, heard

1 Lanky, Jeff Klink, he was working at that residence when  
2 Brian Fitch arrived and saw him along with Kelly Hardy; how  
3 they entered in, went into the residence with the others.  
4 That while in the residence he was threatened; Brian Fitch  
5 threatened to kill his fucking family, is what he testified  
6 to. There's conversations that he was to tell people and  
7 tell the world that Fitch was going to Canada. He saw the  
8 gun, the black gun with the laser sight in Brian Fitch's  
9 hands.

10 You heard from Jeff Klink, also known as Lanky.  
11 He too recalls Brian Fitch coming to the residence with  
12 Kelly Hardy, and he believes Darren Bergstrom also came with  
13 them. He too recalls going into the residence. Didn't know  
14 exactly why. Brian Fitch showed up; he owed him 5-, \$600  
15 and he assumed it was to collect some money. He too  
16 recalled seeing the gun; believed it came in the Jimmy  
17 John's bag and was pulled out, was sitting there; he was  
18 waving it around. He described the gun with the laser sight  
19 in a somewhat threatening manner but not quite to the extent  
20 of Jacob Hayes. Talked about the cell phones; turn off your  
21 cell phones. Asking questions, who's here? Take your  
22 battery out of your cell phone.

23 Jeffrey Klink recalled that at one point in time  
24 the defendant, Brian Fitch, and Darren Bergstrom went into  
25 the back room, where they talked about and prepared to go to

1 a cabin up in Wisconsin, near Luck, Wisconsin; and Jeffrey  
2 Klink testified that they even drew a map. It was kind of a  
3 crude map on a piece of paper; he recalled a black felt pen  
4 or some type of magic marker, they were drawing; it didn't  
5 make much sense to Jeffrey Klink. He was somewhat familiar  
6 with the area. They were talking about where they were  
7 going to meet; but looking at the map, it didn't make a lot  
8 of sense, it was too general. There was talk about Canada  
9 and telling people they went to Canada.

10 And you heard the testimony of Darren Bergstrom,  
11 didn't see a gun. Remembers something about Canada, but  
12 that's about it. Relationship to the parties, ability to  
13 know and remember and relate the facts.

14 And you heard from Kelly Hardy, Eastside Kelly,  
15 who didn't recall much about what had happened; doesn't  
16 recall seeing a gun ever. Of course, she also later on  
17 didn't recall hearing any sirens or seeing any lights or  
18 hearing any gunshots and -- as well. I'll let you judge the  
19 credibility of Kelly Hardy.

20 Officers eventually during the course of this  
21 investigation searched 34 West Sycamore and they searched  
22 the living room of that residence (indicating); and on that  
23 black coffee table they found a Jimmy John's bag, and that  
24 Jimmy John's bag appeared to have been torn, part of it  
25 appeared to have been torn away (indicating). Something

1           that will become more relevant later on.

2                        You heard them testify that after a period of time  
3           a decision was made to leave and that Brian Fitch ordered  
4           Jacob Hayes to get into the blue Veracruz, and Kelly Hardy  
5           got into the back of the blue Veracruz and Brian Fitch took  
6           the driver's seat of the blue Veracruz, and that Jeffrey  
7           Klink and Darren Bergstrom got into the brown Jeep. They  
8           were going to a location, a nearby location, Jacob Hayes  
9           says, where he was going to drop Brian Fitch off and take  
10          the -- and then drive the blue Veracruz back to Karen King  
11          and to Jason (sic) Charles. And remember the testimony of  
12          Investigator Swenke that that white Cutlass was found within  
13          two miles of 34 Sycamore. It's reasonable and rational for  
14          you to conclude that that's where they were going. And  
15          either Brian Fitch was going to take that white car, that  
16          police car, and drive it to the cabin near Luck, Wisconsin;  
17          or he was going to take the brown Jeep, and then Darren  
18          Bergstrom and Jeffrey Klink would need a vehicle and they  
19          had obviously the ability to go back.

20                      However, within minutes after leaving the  
21          residence with the blue Hyundai in the lead, officers began  
22          to stop the vehicles; and it was immediately apparent, you  
23          heard, to everyone that there were police officers, despite  
24          the fact they were being unmarked. You heard the officers  
25          testify that the unmarkeds were marked with emergency



1 lights.

2 The Jeep stops almost immediately, Jeffrey Klink;  
3 but not the blue Veracruz, the blue Veracruz driven by Brian  
4 Fitch. In fact, Investigator Clark testified he -- he  
5 actually saw Brian Fitch in the driver's seat. No, that  
6 vehicle fled and it fled at a high rate of speed. He fled.  
7 Consciousness of guilt, ladies and gentlemen.

8 And a chase ensued with cars, and cars and cars.  
9 And they got into tangle-town and eventually ended up coming  
10 around after a few minutes back down Sycamore, the blue  
11 Veracruz, with officers in pursuit. And they ended up in  
12 the parking lot at 60 Sycamore. The vehicle came in  
13 (indicating), the blue Veracruz, and ended up with --  
14 pointing in to the curb.

15 Officer Bohn, Timothy Bohn was in the black car  
16 effectuating the arrest at the Jeep. Sergeant Don Benner  
17 and Commander Karsten Winger in the passenger seat in the  
18 black vehicle. And as Investigator Bohn would later  
19 testify, when he saw the vehicle he began to approach. And  
20 as he approached, the vehicle came around to the passenger  
21 side of the vehicle, the passenger door opened up. And you  
22 now know out jumped Jacob Hayes. And Jake Hayes told you  
23 what happened. As the gun being held in the right hand of  
24 Brian Fitch came to the passenger side, Jacob Hayes took his  
25 hand and flipped it away, jumped out of the vehicle and ran

1 out in the direction of Officer Bohn, hands up, and was  
2 eventually taken in and apprehended in this particular area.

3 And Officer Bohn continued through; and with that  
4 passenger door open Officer Bohn was very specific and very  
5 definite that Brian Fitch pointed that gun in his direction,  
6 at him and fired; recalls seeing the muzzle flash fire at  
7 him. And Officer Bohn returned fire approximately this  
8 distance (indicating). That's where the 9-millimeter shells  
9 from his gun were found by officers who later processed the  
10 scene. And then what happened next is the vehicle began to  
11 back up, with Officer Bohn feeling that perhaps the vehicle  
12 was going to back into him, began to approach the front of  
13 the vehicle again firing; and there's where his shells were  
14 located as he came around the front of the vehicle; and  
15 eventually ended up near the utility boxes, again where his  
16 9-millimeter shells were found.

17 And as he did that, Sergeant Don Benner who was  
18 driving the black vehicle, unmarked vehicle, on the driver's  
19 side he exited his vehicle and observed the car backing up  
20 towards Officer Bohn and began -- and observed Brian Fitch,  
21 the driver, hold the gun and he did point it at him and  
22 fired right at him. That's the view basically that Sergeant  
23 Benner and Commander Winger had; that's the view that  
24 Officer Bohn had as he's coming around that vehicle. You  
25 could see when the passenger door is open how much you can

1 see as Officer Bohn is coming around; and clearly within  
2 that 10, 12-foot whatever it is, you have the measurements,  
3 defense counsel put them in, you can take a look at the  
4 measurements what you would see as you come around. And you  
5 have the gunshot to the passenger side headrest, which the  
6 officers testify were the burn marks consistent with it  
7 being close to the muzzle as it was shot. Even Dr. Froloff  
8 talked a little bit about some of that in his examinations.  
9 Again, if you're in the driver's seat, that's the passenger  
10 side headrest, and as you bring your right hand over pointed  
11 in the direction of the passenger's side (indicating).

12 Now, maybe going in a slightly downward angle and  
13 perhaps when he fired the gun in the excitement and the  
14 chaos it was down, slightly down, slightly at an angle; but  
15 it doesn't take away the fact that that gun was pointed at  
16 Officer Bohn in his direction with the intent to shoot him  
17 with the intent to kill him.

18 Officer Bohn, as I said, moved around to the front  
19 of the vehicle, began to fire into the windshield of the  
20 vehicle (indicating). Again Commander Winger and Sergeant  
21 Benner positioned in the black, again saw that happening.  
22 They recall specifically, two veteran police officers with  
23 years of service on the force, recall specifically that the  
24 gun was pointed directly at them, they saw the muzzle shots  
25 coming at them. Officer -- or Sergeant Benner returned fire

1 out of fear for his life and the life of Officer Bohn.  
2 Commander Winger did not because he saw Officer Bohn and saw  
3 a woman in the backseat, and immediately he ceased fire; but  
4 he would have, ladies and gentlemen, he said he would have  
5 because a gun was pointed at him and he was in fear for his  
6 life at that time.

7 During the course of this trial, ladies and  
8 gentlemen, you've heard some significant forensic evidence  
9 towards the end of the trial in this particular case. You  
10 heard from Lindsey Garfield, the BCA examiner, who processed  
11 the scene at Dodd and Smith and how they went about doing  
12 the processing of the scene. And you heard her testify  
13 about the recovery of a bullet, Item Number 3, from the  
14 street (indicating). After discussing with the medical  
15 examination -- medical examiner and others that there  
16 probably was a bullet left at the scene, a bullet that was  
17 passed through Officer Patrick's leg, the bullet was  
18 recovered (indicating), was carefully recovered to make sure  
19 that there were no damage done to it during the collection  
20 process. A bullet was subsequently submitted to DNA  
21 testing; was swabbed, remember, by the BCA for DNA; and it  
22 was submitted to DNA analysis by McKenzie Anderson, who  
23 testified that she did recover DNA from that bullet and that  
24 DNA was consistent to match the DNA profile of Officer Scott  
25 Patrick. Reasonable and rational for you to conclude,

1 ladies and gentlemen, that that is the bullet that passed  
2 through Officer Scott Patrick's leg.

3 Now, ladies and gentlemen, they were processing  
4 other scenes. Later on they went to the 667 Robert Street,  
5 they searched around the green Grand Am. The green Grand Am  
6 was locked, they couldn't get into it. Jesse Charles said  
7 there were no keys left. In fact, he was very frustrated  
8 about that and was ready to destroy the car because Brian  
9 Fitch hadn't left the keys, they were nowhere to be found.  
10 But they sealed the car, took it to the BCA garage and began  
11 a search. And during the course of the search of that green  
12 Grand Am, they found Item Number 9, a brass shell casing  
13 near the driver's seat on the floor as you slid the seat up.  
14 A brass casing. They tried to do some DNA; and you heard a  
15 little bit, there was no DNA on that particular bullet of  
16 either Brian Fitch or Officer Patrick. Obviously it  
17 wouldn't be. But then you recall the testimony of McKenzie  
18 Anderson who talked about how DNA deteriorates in heat and  
19 in conditions and when -- and also you recall the testimony  
20 of Kurt Moline in the amount of force and heat needed to  
21 generate that. It's reasonable and rational to conclude, in  
22 fact it probably should be surprising to find any DNA on  
23 that bullet or on that casing.

24 You also heard Lindsey Graham (sic) talk a little  
25 bit about how they propped up the car and they swabbed the

1 general driver's area of the car, the steering wheel, the  
2 shift, the door handle, the door lock, the buttons, they  
3 swabbed the car to possibly collect DNA; how those swabs  
4 were then given and analyzed again by McKenzie Anderson.  
5 The results were pretty much what you expected, now that you  
6 know a little bit about DNA. The defendant could not be  
7 excluded as a source of the DNA; but there were two, three,  
8 four individuals who also were contributors. What we know  
9 about DNA, ladies and gentlemen, what you may not know, is  
10 it stays around; unless it's deteriorated by sun or heat or  
11 wiped off or cleaned, when you drive a car or you grab a  
12 steering wheel and you grab a shift, whether it's your car  
13 or not your car, maybe you're the passenger, you're going to  
14 come across some DNA. So you would expect the car,  
15 especially the way the cars were handled in this particular  
16 case and the way Brian Fitch went from car to car and left  
17 cars for other people to use, you would expect there to be a  
18 number of potential sources; but the main thing, ladies and  
19 gentlemen, the main thing is it did not exclude Brian Fitch.  
20 They processed 60 West Sycamore and you heard a  
21 lot of testimony regarding the processing of it. And recall  
22 the testimony (indicating) that the officers doing the  
23 processing recovered five brass covered shell casings,  
24 similar to the shell casings that were found -- the shell  
25 casing that was found in the green Grand Am. 67 was found

1 outside the vehicle, the driver's door, on the pavement, the  
2 brass casing. Remember, St. Paul Police Department  
3 officers' and the officers' at the scene casings are silver.  
4 They recovered 67. 84, the brass casing on the driver's  
5 seat (indicating). 85, the brass casing in the backseat.  
6 87, the brass casing in the driver's door handle. Item 34,  
7 the brass casing that was in the cup holder (indicating), on  
8 the center console area of the blue Veracruz; later pulled  
9 out and placed on the seat for the purpose of photography.  
10 Five casings, ladies and gentlemen, supporting for which you  
11 can reasonably and rationally conclude that that gun was  
12 fired at least five times from that Veracruz by the driver  
13 of that Veracruz, by Brian George Fitch, Sr.

14 But, you know, ladies and gentlemen, there was  
15 another casing. There's a sixth casing (indicating) because  
16 officers also recovered the handgun, the black handgun with  
17 the laser sight; and in that handgun, ladies and gentlemen,  
18 was a spent casing. And you heard Kurt Moline testify that  
19 if that casing remains it jams the gun, so it can't be shot  
20 anymore. That casing was removed. 6 shots now, ladies and  
21 gentlemen. And recall the testimony and compare the  
22 testimony to Officer Bohn, Sergeant Benner and Commander  
23 Winger; couple of shots at Officer Bohn, couple of shots  
24 fired in the direction of Sergeant Benner and Commander  
25 Winger. That gun was removed by the Forensic Science --

1 Forensics Unit of the St. Paul Police Department. Found in  
2 the gun was the spent shell casing (indicating), three  
3 bullets still in the magazine. Couldn't be fired anymore,  
4 ladies and gentlemen, because of that jam-up. But the  
5 bullets and casings matched the casings of the one in the  
6 spent chamber and the general characteristics also matched  
7 the casings that were founded inside of the blue Veracruz.

8 The gun that was removed, a black handgun with the  
9 laser sight on the bottom of it, consistent with the  
10 description provided by Taya Moran, by Jeffrey Klink, by  
11 Jacob Hayes as the gun that they observed Brian Fitch  
12 possess throughout the day on July 30th of 2014.

13 But there was other things removed from the  
14 vehicle. There was a black bag in the seat (indicating) and  
15 a sock inside that bag. And when they looked inside that  
16 bag, they found a small pistol, a two-shot pistol, the type  
17 of pistol that would fit in the palm of one's hand,  
18 silver-pearl handle consistent with what Taya Moran told you  
19 she observed; testimony and evidence which corroborates what  
20 Taya Moran was telling you about what had happened and what  
21 she knew about Brian Fitch.

22 And there was more additional items that they  
23 found. Because they found the clothing. Actually the  
24 clothing had been removed as medical personnel attempted to  
25 treat Mr. Fitch who had been shot several times, but it was



1 left there at the scene for officers to process and to  
2 review and to search (indicating). What they found in the  
3 clothing was a hat. Remember, people at the scene and  
4 throughout the day testified that Brian Fitch was wearing a  
5 baseball-style cap.

6 The cargo pants, the camouflage pants were also  
7 recovered by the officers at the scene. And inside those  
8 pants approximately 20 -- little over \$2,900 in cash;  
9 supporting the conclusion that he was out there collecting,  
10 that he was preparing for his getaway to survive, \$2,900 in  
11 cash. But there was more in those pockets. There were the  
12 bullets consistent or that's typical of what you saw with  
13 the Derringer, the longer bullets that were used in the  
14 smaller silver gun. But there was something else in the  
15 pocket of Brian George Fitch, Sr. There was a torn-up Jimmy  
16 John's bag. You recall the search at Sycamore and the torn  
17 Jimmy John's bag on the coffee table in the living room.  
18 And when they turned that Jimmy John's bag over, there's a  
19 map, a crudely drawn map with some type of black felt  
20 marker, just as Jeffrey Klink had said had been drawn, a map  
21 of 35E across the bridge at St. Croix and up to Luck  
22 (indicating). Corroborating the testimony of Jeffrey Klink  
23 as to where they were going in the discussions in the  
24 bedroom. Evidence of flight, consciousness of guilt.

25 Now, there's been a lot of testimony, you heard a

1 lot of expert testimony in this case regarding fingerprints  
2 and DNA, and you're the ones who judge about how much weight  
3 you should give that testimony. Judge Theisen has given you  
4 some instructions on how to review the testimony of Kurt  
5 Moline, McKenzie Anderson and Jennifer Kostroski, the  
6 fingerprint expert in this case. You're to take a look at  
7 their specialized training, education, experience, and see  
8 how they testify and the reasonableness of their testimony  
9 that you have in this case.

10 Ladies and gentlemen, you heard the testimony of  
11 Kurt Moline, clearly an experienced firearms examiner with  
12 hundreds of hours of training. He's testified in hundreds  
13 of cases, well-versed, member of professional groups and  
14 organizations; working for a lab, the Bureau of Criminal  
15 Apprehension, which has been certified and accredited by  
16 national organizations who are subject to peer review and  
17 administrative reviews of their processes and their  
18 protocols. He's toured gun factories and learned how they  
19 make guns, how they operate, and he provided you with very  
20 detailed and knowledgeable testimony about how a gun  
21 operates, how it works, how a bullet works, how a casing is  
22 ejected out; and particularly that 9-millimeter handgun, how  
23 it jams up.

24 And he talked about his analysis of the casings  
25 and of the bullets in this particular case that was

1 recovered and the gun that was recovered. Six test shots to  
2 get known shells, that he compared to make sure that there  
3 were consistencies in those test-fired rounds; looking for  
4 both general characteristics that you would expect a  
5 9-millimeter Smith & Wesson to have, the grooves, but also  
6 looking for individual or unique characteristics to a gun,  
7 things that occur through the use of the gun, the cleaning  
8 of the gun, and how the gun is handled, which are more than  
9 the general characteristics that are made through the  
10 tool-making process of manufacturing the gun, but are unique  
11 to that gun, based upon his knowledge and his experience.  
12 He talked about how he compared the casings and the bullets,  
13 the test-fired casings and bullets. Credible testimony,  
14 testimony which you can rely on.

15 And he came to the conclusion, ladies and  
16 gentlemen, that this item, Item Number 3 (indicating), the  
17 gun that was removed from the blue Veracruz, fired the  
18 bullets that were removed from Scott Patrick's body, that it  
19 fired the bullet that was recovered from the scene  
20 (indicating); that the casings that were recovered, and you  
21 have them all here from the green Grand Am, from the floor,  
22 from the roadway, from the parking lot on 60 West Sycamore,  
23 found inside the vehicle, the blue Hyundai, and found inside  
24 the gun, were fired and came from this gun (indicating).

25 Ladies and gentlemen, this is the murder weapon

1 (indicating). This is the gun that killed Officer Scott  
2 Patrick. This is the gun that the defendant used to point  
3 and try to kill Officer Bohn. This is the gun that was  
4 pointed at Commander Winger and Sergeant Benner. This is  
5 where the muzzle flashes came from (indicating) that caused  
6 them to fear their life and return fire. This is the gun  
7 (indicating) that was in the hands of the defendant, Brian  
8 George Fitch; the direct evidence says so. The  
9 circumstantial evidence in this case says so. The State has  
10 met its burden of proof, ladies and gentlemen. We have  
11 proved beyond a reasonable doubt the defendant's guilt on  
12 all of these charges.

13 We are left wondering what would have happened,  
14 perhaps Officer Patrick took another route, decided to  
15 patrol another street, if Brian Fitch would have left a  
16 little later at Pond Circle and chose one of the other  
17 routes, that these two paths may not have crossed, the man  
18 whose life to protect and serve and the man who would do  
19 anything to avoid being caught; but they did cross, they  
20 crossed at that intersection of Dodd and Smith. Scott  
21 Patrick likely didn't know when he put on his badge and his  
22 uniform that it would be the last time. And Officer Bohn,  
23 Sergeant Benner, Commander Winger when they put on their  
24 uniforms and their badges likely didn't know that they  
25 themselves later that day would be put in harm's way as they

1 attempted to apprehend the murder of Officer Scott Patrick.  
2 But that's what happened, ladies and gentlemen. The  
3 evidence says it, all the evidence, the totality of the  
4 evidence.

5 The time has come, ladies and gentlemen, the time  
6 has come for justice to be served. The time has come,  
7 ladies and gentlemen, for you to return verdicts of guilty  
8 of Murder in the First Degree involving Scott Patrick; of  
9 Attempted Murder of Officer Bohn, Sergeant Benner, Commander  
10 Winger and all the assault charges, guilty; you can find him  
11 guilty on all of them because that's what the evidence says.  
12 The time has come.

13 Thank you.

14 THE COURT: Ladies and gentlemen, we'll take a  
15 morning recess, and we'll take -- I think we'll take  
16 20 minutes, we'll come back at 11 o'clock.

17 THE DEPUTY: Please rise.

18 (Jury excused from the courtroom and a recess  
19 taken, after which the following takes place out of the  
20 presence of the jury:)

21 THE COURT: Do we have everyone?

22 THE DEPUTY: I'll double-check.

23 THE COURT: Okay. We're ready for the jurors.

24 (Jury enters the courtroom, after which the  
25 following takes place in their presence:)

1 THE DEPUTY: Please be seated.

2 THE COURT: Ms. Traub.

3 MS. TRAUB: Thank you.

4 (Audio of Exhibit 146 played.)

5 MS. TRAUB: If you were in the middle of that,  
6 would you really know what happened? If you had been  
7 working for 12 hours that day under the stress of dealing  
8 with the emotions of losing a colleague, would it affect  
9 your perception and judgment in this chaotic situation?  
10 What if you knew for sure in your heart that Brian Fitch had  
11 killed that colleague, would it affect your perception if  
12 all day long you had been looking for a man you considered  
13 armed and dangerous and extremely violent and suddenly he  
14 was there in the car in front of you and shooting broke out.  
15 Would you think that every muzzle flash you saw meant the  
16 gun was aimed right at you, or would you stop at least in  
17 hindsight to realize you could see a muzzle flash any time a  
18 gun is fired? Unless, as Commander Hallstrom testified, you  
19 are standing directly behind the shooter? But it doesn't  
20 mean he was firing it at you.

21 Sergeant Benner and Commander Winger said over and  
22 over they just knew Brian Fitch was shooting at them.

23 Commander Winger couldn't even conceive of the idea that  
24 what he thought was a shot aimed directly at him could  
25 actually be a shot into the driver's side rear-view mirror.

1 No one even stopped to add up the number of times the two of  
2 them and Officer Bohn thought Brian Fitch shot at them and  
3 realized that in total he fired his gun six times, so the  
4 three of them couldn't be right, and he couldn't have been  
5 firing at both Sergeant Benner and Commander Winger when one  
6 of them was sitting in the driver's seat and the other was  
7 outside by the passenger side door. They just knew and they  
8 just felt it.

9 But we are in court and the standard here is not,  
10 I just know it or I just feel it. The standard is the State  
11 -- is did the State prove it beyond a reasonable doubt? And  
12 it's your job to decide whether the State proved the charges  
13 in this case to you beyond a reasonable doubt. And your  
14 decision has to be made free from the emotions that ruled  
15 the investigation into this case. It is time to think with  
16 your head, not your heart. To critically examine what the  
17 State did and didn't prove to you throughout this trial.  
18 And when you do that, you will know, that their timeline  
19 doesn't fit, the description of the shooter isn't Brian  
20 Fitch and the firearms evidence that is the crux of this  
21 case isn't supported by science and it isn't reliable.

22 I think the one thing that realize sticks in my  
23 head about this case is how little investigation law  
24 enforcement actually did. They decided Brian Fitch was  
25 their man almost immediately; and throughout the

1 investigation, once they got something or someone who  
2 supported it, they didn't even check to see if that person  
3 was honest or if what that person said could be corroborated  
4 by anything. But if what you said pointed out that they  
5 were wrong, well God help you, they were all over you.

6 Look at Karen King and her son Jesse Charles.  
7 They consistently told law enforcement, they testified under  
8 oath that Brian Fitch was at their home and gone in the  
9 Hyundai Veracruz before Officer Patrick was shot at 12:20.  
10 And that was a problem, it was a big problem, it's a huge  
11 gaping hole in the law enforcement case against Brian Fitch.

12 So they sent Agent Olson back out to talk to Karen  
13 King and her son Jesse Charles last December; he needed to  
14 poke some holes in their story or needed to get them to  
15 change their mind. He told them he needed their help  
16 because they were worried about what the defense was going  
17 to do to, you know, try and protect Brian. And Jesse  
18 Charles told him the same thing he said all along, that  
19 Brian Fitch was pulling into their alleyway as he was  
20 pulling out to get his mom Karen King at work, long before  
21 12:20.

22 And Karen King told Agent Olson the same thing she  
23 told everyone when she was interviewed and when she gave a  
24 statement under oath; the plan for Brian to switch cars was  
25 in place before she left from work and she knew this because



1 when she was on the way to the locker room to change her  
2 clothes at 11:52 she saw a text from her son and she knew  
3 Jesse picked her up from work by 12:03 because there was  
4 security video, and she knows it takes at most seven minutes  
5 to get home from her work because she drives it every day  
6 and she saw Brian Fitch within minutes after arriving home.  
7 Even if you add that up using the numbers that are most  
8 favorable to the State, Brian Fitch is there at 667 Robert  
9 Street and gone in the Hyundai Veracruz before Officer  
10 Patrick is shot. And as she testified here, he could have  
11 been in the home when she arrived because she went straight  
12 into her bedroom and not past the living room where Jesse  
13 Charles and Katie Oney testified Brian was.

14 We know she was honest with law enforcement and we  
15 know her timeline is solid, and how do we know this?

16 Because this is the one thing that law enforcement went out  
17 of their way to double and triple check. Agent Olson went  
18 to the St. Paul Hotel and he got Karen King's time card and  
19 you know what? She was telling the truth, she punched out  
20 at 11:52. Agent Olson spoke with the security division at  
21 the hotel and found out that, yes, indeed she was picked up  
22 between 12:01 and 12:03 on July 30th. And just to be sure,  
23 he drove the route she took home, and she was telling the  
24 truth. And then he had the nerve to sit up there on that  
25 stand and say that she was angry with him when he questioned

1 her honesty. Law enforcement harassed this woman and  
2 stopped her numerous times on the street for no reason. She  
3 lost her job because of this case and this investigation.  
4 She lost her home because of this case and this  
5 investigation. And she lost her car because of Brian Fitch.  
6 She was angry with Agent Olson. Who wouldn't be? But she  
7 was honest. And the timeline doesn't fit because Brian  
8 Fitch was in the Hyundai Veracruz and gone from 667 Robert  
9 Street before Officer Patrick was shot.

10 Now, contrast all the work Agent Olson did trying  
11 to clean up the biggest problem in their case with all the  
12 work he didn't do when he got people to support his theory.  
13 What about Claude Crockson? That whole thing was a  
14 sideshow. It was meant to divert your attention from the  
15 gaping holes in the State's case. Claude Crockson is a  
16 career criminal who by his own admission has spent more of  
17 his adult life in prison than in society. It seems he  
18 pretty much gets out of prison just long enough to get back  
19 in trouble and end up back in prison. I would venture to  
20 bet that on any given day Agent Olson would check if Claude  
21 Crockson told him the sky was blue; but when he got Claude  
22 Crockson to say something that hurt Brian Fitch, he believed  
23 that without checking into it.

24 What about Taya Moran? Do you believe Taya Moran?  
25 Do you remember how she admitted on the stand that she was

1 engaged in a plan with a career criminal who's looking at  
2 300 plus months in prison, that she had been talking to him  
3 on the phone and they were hatching a scene where she would  
4 withhold her testimony in this case unless he could get out  
5 of prison. Does that show someone who respects the process  
6 and who understands the importance of honesty and  
7 truthfulness? Do you believe her?

8 She spoke with law enforcement at 4:30 on  
9 July 30th and she didn't mention anything to them about  
10 anything that Brian Fitch had said the night before. And  
11 two hours later when law enforcement talks with her again  
12 she tells them a different story. She suddenly remembers?  
13 She claims Brian Fitch yelled at her for hours on the night  
14 of July 29th, he yelled at her that she ruined him and he  
15 yelled at her that if he got stopped by a cop he would go so  
16 far as to shoot him. It's kind of coincidental, don't you  
17 think? Taya Moran was high on meth the night of July 29th,  
18 she admitted it on the stand; and her story is that Brian  
19 Fitch yelled at her, belittled her and threatened to kill a  
20 cop. I don't know about you, but if a man did that to me I  
21 would suddenly remember I left the stove on at home and I  
22 needed to leave. Taya Moran didn't do that. She made love  
23 to Brian Fitch and she laid beside him in bed and she stayed  
24 with him all night, and she did that because that  
25 conversation never happened.

1           Isn't it amazing that the State can make the facts  
2           fit when they really want them to? That law enforcement  
3           would only look at one side and one explanation so it points  
4           in the direction they want it to go? And they would try to  
5           discredit anyone who points out the problems in their  
6           investigation. But it's your job to critically examine the  
7           evidence and to look at other explanations and evidence the  
8           State wants you to discount, like the fact the description  
9           of the shooter isn't Brian Fitch.

10           When law enforcement responded to the scene on  
11           Dodd Road there were two women, Amy Stickler and Jennifer  
12           O'Keefe, who both told them the shooter was in their 20s  
13           with longer, sandy blond hair. That description was aired  
14           out over the radio; you can hear it in the audio from  
15           Officer Patrick's squad car. These two women had the best  
16           opportunity to observe the driver of the Grand Am because  
17           they were stopped at the intersection and they noticed the  
18           green car and its driver before the shooting. Do you  
19           remember Amy Stickler said she looked at him and thought,  
20           bummer, he got pulled over? And they both said 20s with  
21           longer, sandy blond hair.

22           The other witnesses who gave wildly different  
23           descriptions were people who saw the car drive by them at 60  
24           to 70 miles per hour, two of them in their rear-view mirror  
25           while they were eating lunch, two of them from as far back

1 at the shopping center, which you can see in the map of Dodd  
2 Road. And only one of them, William Hanson, testified the  
3 driver was bald, except he didn't tell police that when he  
4 gave his statement in September, and he said the car went by  
5 him at 70 miles per hour and it almost T-boned him. The  
6 reason for these inconsistencies is pretty apparent, it's  
7 the distance from the event and the amount of time these  
8 people had to observe the driver. You can't lump those  
9 wildly different descriptions in with the two women who had  
10 the best opportunity to observe the shooter, Amy Stickler  
11 and Jennifer O'Keefe.

12 You heard testimony from Sergeant Greg Gravesen  
13 that if a person is driving 60 to 70 miles per hour, they  
14 are covering 90 to 105 feet in a second. That's more than a  
15 third of a football field in the time it takes you to say  
16 one Mississippi. You might notice the driver was white, but  
17 that's all; and you might tailor your testimony to include  
18 the bald statement if you had been following the case as Mr.  
19 Hanson testified he has because you want to think law  
20 enforcement got it right.

21 The State brought these witnesses in so they could  
22 say to you no one got the description of the shooter right,  
23 not all these people, but the difference is the two women  
24 who had the most opportunity to observe the shooter in a  
25 calm situation prior to the shooting were Amy Stickler and

1 Jennifer O'Keefe and both said 20s with sandy blond hair.  
2 Ms. Stickler and Ms. O'Keefe testified they want to think  
3 law enforcement got it right, which would explain why they  
4 were not as sure on the stand as they were when they spoke  
5 with law enforcement immediately after the event. Because  
6 the person law enforcement arrested is not the shooter they  
7 saw. In fact, Ms. O'Keefe tried to say on the stand that  
8 she picked Mr. Fitch out of a lineup twice, but she didn't.  
9 She didn't even pick him once. We know this because  
10 Sergeant Jake Peterson came in and he testified that both  
11 women did not pick Mr. Fitch out of a lineup that he was  
12 actually in. Ms. O'Keefe said two other men in the older  
13 bald men lineup were closer to the shooter. Those are the  
14 two men that she confused on the stand and said were Mr.  
15 Fitch. And both women repeatedly told Sergeant Peterson the  
16 men in the younger lineup looked much more like the shooter.  
17 That's because the shooter wasn't Brian Fitch.

18 So who was the shooter? Well, as you know, it's  
19 not my job to prove to you who the shooter was. That's the  
20 State's job. And they argue that it had to be Mr. Fitch  
21 because no one else had access to that vehicle, no one had  
22 the keys; it had to be Mr. Fitch, even though the timeline  
23 has him long gone from the address on Robert Street in a  
24 different vehicle before Officer Patrick is shot.

25 Ignore the fact that when Mr. Fitch was arrested

1 he didn't have the Grand Am keys with him. Ignore the fact  
2 that Karen King told law enforcement she saw Brian give  
3 those keys to her son Jesse Charles. Ignore the fact that  
4 it was only Jesse Charles who said Brian asked him to cover  
5 his vehicle. Ignore the fact that Brian Fitch's DNA profile  
6 wasn't the only one found in that Grand Am. Ignore the fact  
7 that law enforcement didn't bother to take DNA samples from  
8 anyone else in this case to see if they in fact had been in  
9 that vehicle. Ignore the fact that both Karen King and  
10 Katie Oney said they wouldn't have noticed if that Grand Am  
11 remained in the backyard because Karen King, remember,  
12 testified she went in her bedroom and was looking on the  
13 internet for apartments and Katie Oney said she was sick on  
14 the couch with a migraine and a 14-day meth binge. Ignore  
15 the fact that someone who was unemployed and had violent  
16 tendencies had \$600 to give Brian Fitch for meth, but he  
17 couldn't help his mother with her car payments. Where did  
18 that money come from? That might show a person who is  
19 involved in illegal activities. And while you're at it, why  
20 don't you just ignore the fact that Jesse Charles has sandy  
21 blond hair, that it would stick out from underneath a  
22 baseball cap. The description of the shooter isn't Brian  
23 Fitch because the shooter wasn't Brian Fitch.

24 The State points to evidence that really doesn't  
25 matter because it was tailored to fit their theory.

1 Lieutenant Swenke testified about what he thought was the  
2 best way to get to 667 Robert Street from Laurie Pocock's  
3 house. He says the most direct route would be straight up  
4 Robert Street, but he discounts that because of all the  
5 stoplights and the traffic and the police and all the cars.  
6 He says the best way is to go far west from the house and up  
7 Dodd Road with its stoplights and stop signs because, well,  
8 that's where the shooting happened and that's where they  
9 need the car to be. When it was pointed out on cross that a  
10 person could go east and up Highway 52, which has no  
11 stoplights or stop signs, Lieutenant Swenke just really  
12 didn't think that was possible because why would a person go  
13 that far east and cut back west? Well, if it's possible to  
14 go far west and go up Dodd Road and cut back east, isn't it  
15 just as possible to go far east and up on a freeway that's  
16 much quicker and cut back west?

17 And Agent O'Donnell, he made a map with a circle  
18 that shows it would be possible for Mr. Fitch's cell phone  
19 to ping off the 1544 tower if he was at Laurie Pocock's  
20 house. When you look at that map, it looks like that is the  
21 only possible place where Mr. Fitch could be because Agent  
22 O'Donnell only extended the map a mile and a half.

23 But then on cross, do you remember Agent O'Donnell  
24 had to admit that a cell phone can ping off a tower up to  
25 10 miles from its location; and if the radius were extended



1 and the map was accurate, that would include Robert Street  
2 all the way up into St. Paul, even into St. Paul. And Agent  
3 O'Donnell had to admit on cross that many things affect  
4 which tower a cell phone pings off of; it can be affected by  
5 the weather, by the generation of the cell phone, by whether  
6 a tower is optimized for that particular cell phone, by  
7 whether the tower is out, by what kind of traffic is going  
8 through that tower at any given time, by the topography of  
9 the area. The list goes on.

10 And again it's not my job to prove to you that  
11 those towers were working or that the weather was good or  
12 bad or whether that tower is optimized for what phone.  
13 That's the State's job to prove to you that those other  
14 towers were just fine so he had to be close. And we didn't  
15 hear had any testimony about that.

16 The State wants you to think that Mr. Fitch shot  
17 Officer Patrick and that he spent eight hours making  
18 preparations to flee. Really? That kind of defies logic.  
19 If you shot a police officer, wouldn't you get the heck out  
20 of Dodge immediately? You wouldn't hang around less than a  
21 half an hour from where the shooting occurred.

22 On the afternoon of July 30th Brian Fitch did what  
23 he was pretty much doing every day, because he didn't shoot  
24 Officer Patrick; he was going about the same business that  
25 he did every day. He was a deal -- a drug dealer and he was

1 a drug dealer that day. He had \$3,000 on him when he was  
2 caught because he was dealing meth and people pay him for  
3 it. He had meth on him because he was dealing meth.

4 Someone who shoots a police officer doesn't hang  
5 around town for \$3,000. And someone who shoots a police  
6 officer doesn't go to Dairy Queen. They might go to Dairy  
7 Queen on their way out of town as they're heading towards  
8 Canada, but Mr. Fitch went to Dairy Queen in a northern  
9 suburb of the Cities and came back to the Cities. He got a  
10 new cell phone, he went in one of the stores, and his friend  
11 Kelly Hardy went in another. He changed cell phones all the  
12 time. We had testimony about that. In fact, he could have  
13 left that cell phone ending in 2239 at the house on Pond  
14 Circle and he needed a new phone. Someone who shot a police  
15 officer doesn't go put a tire on a car in Frogtown, one of  
16 the areas with the highest police presence in the City of  
17 St. Paul, and sit around in that store while they put a new  
18 tire on. And someone who shot a police officer sure as heck  
19 doesn't go to a Jimmy John's that's within blocks of the St.  
20 Paul Police Department headquarters; where you heard some of  
21 the officers say, yeah, I've been to that Jimmy John's.  
22 That defies logic and it certainly doesn't show an intention  
23 to flee. It shows the behavior of a person who didn't shoot  
24 Officer Patrick.

25 I know what you're thinking, if he didn't shoot

1 Officer Patrick, why didn't he just turn himself in? I  
2 mean, he got to his -- to that house on Sycamore Avenue and  
3 every one there started saying, dude, it's all over  
4 Facebook, you shot a cop. So Kelly Hardy looks up news  
5 sites on her cell phone and she sees this, and he has a  
6 warrant already and he knows that everyone thinks he shot a  
7 police officer. It isn't his first inclination to turn  
8 himself in. It's his first inclination to get the heck out  
9 of town. He has a criminal history. He has a warrant out  
10 for his arrest. No one is going to believe he didn't do  
11 that. They've already made up their mind. It's very easy  
12 for all of us to say the logical thing would be to turn  
13 yourself in and hope that law enforcement gets it right.

14 But would you really do that in a moment of panic?

15 What if your only support at this point in time  
16 was a house full of meth heads who are high? You might say,  
17 wholly shit, I should go to Canada and people might think  
18 you were serious, especially if they didn't know you that  
19 well and they were high, as they all were, and especially --  
20 you might even consider going to a cabin in Wisconsin for a  
21 while to come up with a plan before you were terrified --  
22 because you were terrified. But if you were to go to a  
23 cabin in Wisconsin, wouldn't you have a better map? Look at  
24 that map when you get in the back. I don't think you could  
25 find Luck, Wisconsin, let alone a cabin there from that map.

1 It's easy to say he should have turned himself in, but who  
2 knows what any one of us would do in that situation.

3 Mr. Fitch definitely wanted to avoid law  
4 enforcement at this point, I'll give you that. So he tried  
5 to drive away from them, except not very well. And he ended  
6 up cornered with four members of law enforcement firing at  
7 him, as you heard on that tape. We played the audio of that  
8 shooting in St. Paul to prove a couple things to all of you.  
9 First, this shooting happened incredibly quickly. It was  
10 over in 10 seconds at most. And, second, the police  
11 unloaded on Brian Fitch immediately. There were at least  
12 four officers who shot at Brian Fitch. You heard from  
13 Officer Bohn and Sergeant Benner and you heard from  
14 Commander Winger who didn't fire his weapon. You didn't  
15 hear from Eric Johnson who was firing a rifle directly off  
16 to Commander Winger's right and you didn't hear from Trygve  
17 Sand, who was a little further to the right of Eric Johnson.  
18 We know they fired at Mr. Fitch because their casings are  
19 documented in the maps that Sergeant Gravesen produced.

20 I asked every single police officer on the stand  
21 if they had ever been in an officer involved shooting, and I  
22 wanted to provide two points to you with that question.  
23 Officer involved shootings are incredibly rare and they are  
24 incredibly terrifying events, and that police officers  
25 always say they were in fear for their lives or someone

1 else's life when they shoot.

2 So then why didn't the State call Officers Johnson  
3 or Sand? Wouldn't they also have said they were in fear for  
4 their lives or the lives of the other officers? Or maybe  
5 their stories wouldn't exactly have matched what the other  
6 officers said. Maybe the other officers didn't call them --  
7 or maybe the State didn't call those other officers because  
8 those officers never even claimed that Mr. Fitch was  
9 shooting at them. Yet they were shooting at Mr. Fitch.

10 The fact of the matter is this shooting happened  
11 so fast and was so chaotic, no one knows what really  
12 happened. It was so fast and so chaotic that law  
13 enforcement was shooting at each other, and they stopped  
14 shooting when they realized the fact they were putting each  
15 other's lives in danger. No one knows who really shot  
16 first.

17 Didn't you feel sorry for Ray Smith? Do you  
18 remember him? The State brought him in here to say that he  
19 saw the shooting and that Brian Fitch shot first. Did you  
20 see how suggestible he was on the stand? He clearly has  
21 cognitive delays. Law enforcement was able to manipulate  
22 him to say Mr. Fitch shot first. When I showed him his  
23 statement, he agreed with me that he originally said he  
24 couldn't see who shot first; and then when police suggested  
25 to him it was Mr. Fitch, he agreed. He couldn't see who

1 shot first because he couldn't see the shootout. His view  
2 was blocked by trees in full bloom and 165 feet in distance,  
3 and a whole lot of fear that had been building up all day  
4 when his father told him they needed to lock themselves in  
5 the house. But the State put him on the stand anyway  
6 because they wanted someone other than law enforcement to  
7 say that Brian Fitch shot first.

8 Brian Fitch shot six times. He fired once into  
9 the passenger headrest; and you can tell from the angle of  
10 the trajectory rod that it went down at a severe angle and  
11 probably into the backseat. And if Officer Sipes had  
12 bothered to obtain measurements and do an actual trajectory  
13 analysis, that would have been his conclusion. He fired  
14 once into the driver's side rear-view mirror. And do you  
15 remember how many times I had to ask Officer Sipes about  
16 that? We went round and round about if a bullet was fired  
17 from inside the driver's side, inside the car, it would be  
18 on the mirror side of the rear-view mirror. It took four  
19 times before he would admit that. Do you remember I walked  
20 up to the stand and had him read his own statement because  
21 he hadn't brought it with him to court. Why did they fight  
22 so hard on something like that? We don't know whether --  
23 where the other four shots went, except we know Mr. Fitch  
24 never hit a member of law enforcement; he never hit their  
25 vehicles; he never even came close.

1           The law says that to convict someone of attempted  
2 murder the State has to prove to you beyond a reasonable  
3 doubt that the act the person engaged in clearly indicates  
4 the intent to commit murder. The State has not proven to  
5 you beyond a reasonable doubt that Mr. Fitch clearly  
6 intended to murder Commander Winger, Sergeant Benner or  
7 Officer Bohn. What Mr. Fitch's actions show is he  
8 discharged a firearm, rather badly. I don't doubt that  
9 Commander Winger and Sergeant Benner and Officer Bohn were  
10 afraid, but the standard isn't what those officers thought  
11 or how afraid they were or what they knew. That doesn't  
12 prove attempted murder. Proves they were afraid, and that  
13 is at most assault in the second degree, not attempted  
14 murder. Because the State hasn't proven Mr. Fitch's intent  
15 to kill them. In fact, all the evidence shows was he wasn't  
16 intending to kill them, he couldn't hit broadside of a barn.  
17           Which brings me to this point. Did you notice how  
18 accurate the shooter was that killed Officer Patrick? That  
19 person didn't even turn around. He put the gun out the  
20 window and without looking back he fired three shots with  
21 deadly accuracy.  
22           The State's timeline doesn't fit. They can't  
23 prove to you that Mr. Fitch was in the green Grand Am at  
24 12:20 when Officer Patrick was shot because hard evidence  
25 shows he wasn't. The description of the shooter from the

1 two women who had time to observe the driver isn't Brian  
2 Fitch because the shooter wasn't Brian Fitch.

3 That leaves the firearm. And in order for the  
4 State to prove to you beyond a reasonable doubt that Brian  
5 Fitch shot Officer Patrick, they have to prove you beyond a  
6 reasonable doubt that the gun he was found with in St. Paul  
7 is the same gun that was used to shoot Officer Patrick; and  
8 they didn't, because they can't, because it isn't. Did you  
9 notice that when the prosecutor asked Mr. Moline if he was  
10 100 percent sure the firearm recovered from Mr. Fitch in St.  
11 Paul was the same firearm used to kill Officer Patrick, Mr.  
12 Moline didn't say yes. He sort of sidestepped the  
13 statistics when he gave his answer. If he was so darn sure,  
14 why didn't he say he was 100 percent certain? What  
15 percentage does it need to be for it to be reasonable doubt?  
16 I don't think Mr. Moline likes statistics. He certainly  
17 doesn't like the statistics to point out flaws in firearms  
18 examination.

19 Do you remember we talked about the study by  
20 Alfred Biasotti. That study basically defuncts the entire  
21 theory that every firearm imparts unique marks, the stria,  
22 and that study is incredibly well-known in the firearms  
23 examiner community. Mr. Moline said he's heard of it.  
24 He's probably actually read it a time or ten, and he  
25 probably does not like the statistic that 15 to 20 percent



1 of the stria on bullets fired from different weapons matched  
2 in this study. So instead of acknowledging the statistic or  
3 finding any flaw in the study, he said he doesn't use  
4 statistics.

5 If you think firearms examiners don't like a study  
6 that points out bullets fired from different firearms can  
7 have matching not so unique marks on them 15 to 20 percent  
8 of the time, how do you think he feels about the other  
9 statistic in that study? 66 to 79 percent of the stria on  
10 pairs of bullets fired from the same weapon in that study  
11 didn't match. How can you say a firearm is unique when  
12 there are hard statistics like this? How can anyone have  
13 any degree of confidence in firearms examination when there  
14 are studies like this that defunct the whole theory on which  
15 that identification is based?

16 I'll give you the fact that when firearms were  
17 first made by hand they were unique, but not anymore.  
18 Firearms are mass manufactured. The Smith & Wesson M&P  
19 9-millimeter that was found in this case is produced and  
20 sold in huge quantities in America. Half of the St. Paul  
21 Police Department carries it as their duty weapon. Parts of  
22 the M&P 9-millimeter are made with metal injection molding  
23 which allows for even larger production runs with no  
24 variation in the weapons.

25 And Mr. Moline provided no studies that support

1 his assertion of uniqueness. He came in here and he talked  
2 about class characteristics like they were magical, until I  
3 pointed out that every Smith & Wesson M&P 9-millimeter has  
4 the same class characteristics. They have all fives lands  
5 and grooves; they all have a right-hand twist; and they all  
6 leave a teardrop impression on the cartridge case from the  
7 firing pin. Then he tried to say, well, that is true so  
8 long as they don't change their manufacturing methods, as if  
9 to imply that somewhere along the way they had. But in his  
10 next sentence he said, well, I should note that the M&P  
11 9-millimeter has been manufactured by Smith & Wesson with  
12 these class characteristics for as far back as he could  
13 remember. He didn't talk about subclass characteristics on  
14 direct. I had to bring it up on cross. He had to  
15 acknowledge on cross that studies show that firearms  
16 examiners routinely mistake subclass characteristics for  
17 individual characteristics. They declare matches on what  
18 they think are unique to one firearm, when it turns out that  
19 every firearm in the same manufacturing lot has those  
20 characteristics. And studies show these mistakes are  
21 especially prevalent in the very firearm he examined in this  
22 case.

23 So the State tried to rehabilitate him by asking  
24 him if he considered and eliminated subclass characteristics,  
25 and he said he did. Well, how does he know he did that? Is

1           there anything in his documentation that says he even  
2           considered and eliminated what he determined were subclass  
3           characteristics when he did the examination in this case?  
4           Or does he just think he did, like all those examiners in  
5           those studies that point out the problem to begin with? He  
6           sure didn't document any consideration of subclass  
7           characteristics in his file.

8                     You saw his file, he put it up on the screen so  
9           you all could see what he documented. The standard in the  
10          field of firearms examination is to document your file so  
11          fully that another examiner can look at that file and know  
12          exactly what you rely on to make your determination without  
13          having the benefit of looking at the evidence. He documented  
14          the class characteristics that you would find in every Smith  
15          & Wesson 9-millimeter and then he said matching stria. Do  
16          you even know what he relied on? The standard to declare a  
17          match is, think about the best known non-match you've ever  
18          seen and if this is better than that it's a match. Does  
19          that sound scientific to you? What was his best known  
20          match? Do you remember I asked him and he wouldn't give us  
21          a number. Was his best known non-match nine areas of  
22          agreement and this one had 10, so congratulations it's a  
23          match? Was his best known non-match three areas of  
24          agreement and this one had four? He never said.

25                     Do you want to convict someone on that standard?

1 Do you want to take his word for it on this one? Do you  
2 want to vote to convict when he can't even show you what he  
3 saw? When he can't even give you the number of agreements  
4 that he saw between his test-fires and the evidence from  
5 Scott Patrick's shooting? When he won't even show you a  
6 picture? You're the trier of fact, not Mr. Moline. He's  
7 supposed to show you what he relied on when he came to his  
8 conclusion; not just come in here and say, trust me, I'm an  
9 expert.

10 He doesn't show you a picture because he thinks  
11 that's two-dimensional and it doesn't adequately show you  
12 what he saw, but at least it would be a start and he can  
13 explain something to you. He says you have to look through  
14 the three-dimensional microscope before you can make a call.  
15 Is there some rule that says he can't bring a microscope in  
16 here? The DNA analyst said she could bring in what she  
17 looked at, the electropherograms. We could put those up on  
18 the screen. She could explain to you her training and  
19 experience, and you could decide if you agreed with her.  
20 And the DNA analyst has a scientifically valid database that  
21 supports her assertion that it was Mr. Fitch's DNA and only  
22 Mr. Fitch's DNA on the gun. That isn't exactly a Perry  
23 Mason moment since he had the gun with him in the car and he  
24 bled all over it, but at least she has a verifiable  
25 scientifically supported basis for her opinion. Mr. Moline

1 says, I'm thinking of the best known non-match in my head  
2 and this is better and that's enough. It's not and it  
3 shouldn't be.

4 And, you know, Mr. Moline said he didn't allow the  
5 context of the case to affect his opinion. Do you remember  
6 when I asked the fingerprint examiner about the Itiel Dror  
7 study and the Brandon Mayfield case where they showed some  
8 fingerprints to some fire -- some fingerprints examiners? I  
9 didn't ask for that just because I wanted to know about  
10 contextual bias in fingerprint examiners. It applies to  
11 firearms examiners as well. Those five examiners all were  
12 shown their own work. They were shown two prints that they  
13 had previously said in casework matched, but this time they  
14 were told these are the Mayfield prints and everyone in the  
15 fingerprint community knew that three FBI examiners got it  
16 wrong and they weren't a match. And you know out of those  
17 five examiners that were given the context of what they were  
18 looking at, only one had the courage to still say it was a  
19 match. The other four changed their opinion. Is that  
20 because they were wrong the first time? Or did they change  
21 their opinion because they knew the context of the case?  
22 I'm sure they thought they were not affected by the context  
23 when they did that examination, but they clearly were. And  
24 I'm sure Mr. Moline thinks he wasn't affected by the context  
25 of this case, but how do we know?

1           It isn't my job to prove to you that the firearm  
2           isn't the same. It's the State's job to prove to you beyond  
3           a reasonable doubt that it is. And I think at best they  
4           proved to you it might be, but we don't convict on might be.  
5           We don't convict on something that isn't science, that isn't  
6           supported by statistics and isn't verifiable.

7           I made a promise to you when I stood up here at  
8           the beginning of this case that I would never ask a question  
9           that wasn't important, and I didn't. I told you to listen  
10          to every question we asked and every answer we got because  
11          they were important and they are. And every witness that  
12          came up here wasn't just the State's witness. They called  
13          them, but we asked them questions too.

14          And you all made a promise to me when you were in  
15          voir dire. Do you remember? You promised you would listen  
16          until the very end, that you wouldn't make your mind up  
17          until the judge told you it was time to deliberate. There  
18          were probably times during this trial when you vacilated  
19          between thinking one way or the other. Much like I did when  
20          I listened to that podcast on my way to Texas. But your  
21          time is here now and it's your duty to critically examine  
22          all of the evidence, to ask yourself exactly what the State  
23          gave you that proved their case beyond a reasonable doubt.

24          Your decision is one of the most important  
25          decisions you will ever make in your lifetime. It's more

1 important than buying a house or choosing who to marry or  
2 what college to go to. Because those decisions are  
3 reversible. It might be hard to get out of a home you don't  
4 like. It might be sad to get a divorce. And if you find  
5 you don't like a college that you choose, you can change.  
6 This decision requires more care and consideration because  
7 it's irreversible. This decision is you have breast cancer  
8 and you need a mastectomy. There's no hope and you need to  
9 pull the plug from your loved one. Your decision must be  
10 based on what the State has proven to you beyond a  
11 reasonable doubt through hard evidence. It isn't based on  
12 the emotion of Officer Patrick losing his life, because we  
13 can all agree that was horrible. It isn't based on the  
14 respect we all have for law enforcement, because just like  
15 most of you I respect and have friends in law enforcement  
16 too. It isn't based on what you feel or what you think.  
17 It's based on what you know because the State proved it to  
18 you.

19 And when you give it the care and consideration  
20 that this deserves and you look only at what the State  
21 proved to you free of emotion, you will know. Mr. Fitch is  
22 not guilty of the attempted murders of Commander Winger and  
23 Sergeant Benner and Officer Bohn because the State didn't  
24 prove his intent to kill any of them. The evidence shows  
25 much less. And you will know Mr. Fitch is not guilty of the

1 murder of Officer Scott Patrick because their timeline  
2 doesn't fit, the description of the shooter isn't Brian  
3 Fitch and the firearms testimony that is at the center of  
4 this case isn't supported by science and it isn't reliable.  
5 And that, ladies and gentlemen, is not guilty.

6 THE COURT: Mr. Prokopowicz.

7 MR. PROKOPOWICZ: Thank you, Your Honor.

8 Defense Counsel has argued to you that it's not  
9 supported by science, the conclusions of the scientist, Kurt  
10 Moline. She referenced studies, things that were --  
11 articles that were published by other individuals, people  
12 that didn't testify in this courtroom, people who weren't  
13 subjected to cross examination.

14 Ladies and gentlemen, your job in this case is to  
15 base your decision based upon what you hear in this  
16 courtroom and the testimony that you hear in this courtroom.  
17 And when you examine the testimony of scientist Kurt Moline,  
18 recall the instructions of Judge Theisen on --

19 MS. TRAUB: Objection, beyond the scope of  
20 rebuttal.

21 THE COURT: It's overruled. Go ahead.

22 MR. PROKOPOWICZ: -- expert testimony. (Reading)  
23 A witness who has special training, education or experience  
24 in a particular science, occupation or calling is allowed to  
25 express an opinion as to certain facts. In determining the



1 believability and weight to be given such opinion evidence,  
2 you may consider the education, training, experience,  
3 knowledge and ability of the witness; the reasons given for  
4 the opinion; the sources of this information --

5 MS. TRAUB: Objection, Judge. Can we approach?

6 THE COURT: Yes.

7 (Bench conference off the record and out of the  
8 hearing of the jury.)

9 THE COURT: Objection is overruled.

10 MR. PROKOPOWICZ: -- the reasons given for the  
11 opinion; the sources of the information; and the other  
12 factors previously mentioned. It was Kurt Moline who  
13 testified to you regarding his opinion, his background, and  
14 his training and his experience, the wealth of experience  
15 that he testified to, the examinations. He didn't have  
16 photographs, the State will concede that; but what would  
17 these photographs have done for you if you take them back  
18 into that room, the two-dimensional photographs without the  
19 experience and the training of Mr. Moline, give if anything.

20 Talked about the examination and the various  
21 studies and quite frankly, ladies and gentlemen, we all  
22 know, whatever the profession, be it a contractor or teacher  
23 or other profession, banker, lawyer, doctor, there are good  
24 people who do their job well, who do it good, who rely on  
25 their experience and training and do it right and there are

1 people who let outside things influence them. I don't know  
2 what the FBI agents on this previous study, I don't know  
3 what the other people who misidentified the fingerprints  
4 because of bias.

5 What you heard about Kurt Moline and his  
6 background, that at one time he even submitted himself to  
7 that type of testing. As you heard, he got nine out of nine  
8 right. That's the expertise, that's the care that you heard  
9 from that witness stand when you take a look at it. It  
10 isn't junk science, as suggested by defense counsel,  
11 something not to be relied upon. It's generally accepted in  
12 the forensic scientific community. It's used by the BCA  
13 lab, a lab which has been accredited by outside nationwide  
14 experts.

15 Now, you heard in her comments, defense counsel  
16 indicate and suggest that at best what Mr. Fitch did was  
17 discharge that firearm six times, that he didn't -- the  
18 State hasn't proved that he intended to kill Officer --  
19 Commander Winger, Sergeant Benner or Officer Bohn. It  
20 defies logic and reason and common sense. What was he going  
21 to do by firing the gun? Scare away the hundred police  
22 officers that had surrounded him with their guns pointed at  
23 him? No. What he was going to do is take away and take out  
24 as many officers as he could.

25 THE DEFENDANT: Overruled.

1 THE COURT: Go ahead.

2 MR. PROKOPOWICZ: To take out as many officers as  
3 he could. That's what he was doing when he pointed that gun  
4 at Commander Winger, Sergeant Benner and Officer Bohn. That  
5 was his purpose and that's the intent to kill.

6 Defense counsel suggests, well, if you just shot a  
7 police officer such as Officer Patrick, in those situations,  
8 why would you hang around? Let's get up to Canada as quick  
9 as you can. Which may be the case if this was a planned  
10 event, but I'm sure the defendant didn't know that he was  
11 going to run into Officer Patrick that would result in the  
12 shooting and he wasn't prepared to leave, didn't have the  
13 money, didn't know where he was going to go. How was he  
14 going to cross the border? And he needed time to do that.  
15 He needed time to gather the money. He needed time to  
16 connect with Bergstrom and Jeffrey Klink and to figure out  
17 where to go, what cabin to go to. Bergstrom's cabin, didn't  
18 have any sewer. But he needed to plan that, collect the  
19 money, and that's what he was doing that afternoon. That's  
20 why he was hanging around.

21 The suggestion that perhaps Jesse Charles, that  
22 the police didn't look at Jesse Charles. He has blond hair,  
23 he has access to the green Grand Am. The problem, the  
24 timeline doesn't fit for Jesse Charles. Because we know  
25 where Jesse Charles was a little after 12. He was picking

1 up his mother at the St. Paul Hotel. And we know where he  
2 was at approximately 12:10 to 12:15, somewhere depending  
3 upon when they got home. He was with his mother. And we  
4 know where he was at 12:20 because according to his mother,  
5 Karen King, and Katie Oney and others, he never left. He  
6 was there discussion -- discussing, they were tarping the  
7 vehicle and the like. He certainly couldn't have gotten  
8 from 667 Robert Street to Dodd in Mendota Heights, and not  
9 going southbound and southwest on Dodd, but somehow got to  
10 where he was going and turn around and coming back northeast  
11 all in a matter of a few minutes.

12 Jesse Charles wasn't the person in that green  
13 Grand Am that pulled that firearm and shot Officer Patrick.  
14 The totality of the evidence in the case says it was Brian  
15 Fitch.

16 Counsel talked about Taya Moran. Geez, she tried  
17 to cut a deal for her testimony for some inmate in prison.  
18 The testimony was the same that she gave on July 30th, at  
19 the previous court hearings, and that wasn't even an issue.

20 Counsel also talked about Claude Crockson, to  
21 somehow imply that law enforcement was out to set him up and  
22 relying on unreliable testimony of convicted inmates and  
23 people who are sent to prison for long periods of time, you  
24 should disregard that testimony, that officers are somehow  
25 grasping at straws. You remember Claude Crockson. State

1 finished its case with -- he took the witness stand and he  
2 testified about a plot to murder two witnesses, Taya Moran  
3 and Laurie Pocock; two key witnesses, one who provides  
4 motive, one who puts him in the green Grand Am, another one  
5 who puts him in the green Grand Am, that sets the timeline  
6 for July 30th. Those were the two witnesses that Claude  
7 Crockson indicated Brian Fitch wanted murdered, two  
8 witnesses.

9 We didn't rely just on the testimony of Claude  
10 Crockson. We relied on the surveillance video as well, and  
11 you saw it and you'll see the still photographs when you  
12 begin to deliberate, which supports Claude Crockson's  
13 statement about the passing of the map. And you see him  
14 bending down by the door and you see Claude Crockson picking  
15 it up, going to his cell and opening the map; the map which  
16 was removed from Claude Crockson's personal property, which  
17 you have, it's Exhibit 141 (indicating), Christmas paper and  
18 the design on there consistent with paper that came out of  
19 Brian Fitch's cell. And the map itself, not something that  
20 you could get off the internet or on TV. According to Agent  
21 Olson, a detailed map, providing streets and businesses and  
22 where they're located, as specific as the apartment and the  
23 corner of the apartment where Taya Moran lived. Something  
24 that Claude Crockson would not have known, not from the  
25 internet, not from the media; but something that the

1 defendant, Brian George Fitch, would know having lived there  
2 and stayed there and been there on repeated occasions, the  
3 detail of the map. But we're not relying on this as well --  
4 only this, because the two fingerprints that were on this  
5 map, two fingerprints of the defendant, Brian George Fitch.

6 Ladies and gentlemen, your job and your duty and  
7 responsibility is to look at all the evidence in the case  
8 that you've heard, look at it together and how it fits. And  
9 if you do, ladies and gentlemen, the timeline does fit, the  
10 descriptions do fit, the science is good, and the defendant  
11 is guilty.

12 Thank you.

13 THE COURT: Ladies and gentlemen, the first thing  
14 you should do -- pardon me -- when you get into the jury  
15 deliberation room is to select a foreperson who will preside  
16 over your deliberations. In order for you to return a  
17 verdict, whether guilty or not guilty, each juror must agree  
18 with the verdict, your verdict must be unanimous. You  
19 should discuss the case with one another and deliberate with  
20 a view to reaching agreement, if you can do so without  
21 violating your individual judgment. You should decide the  
22 case for yourself, but only after you have discussed the  
23 case with your fellow jurors and have carefully considered  
24 their views. You should not hesitate to reexamine your  
25 views or to change your opinion if you become convinced it

1 is erroneous, but you should not surrender your honest  
2 opinion simply because other jurors disagree or merely in  
3 order to reach a verdict.

4 In arriving at your verdict you should not permit  
5 bias, prejudice or sympathy to affect your verdict. You  
6 should not speculate upon any consequences of your verdict,  
7 whether the verdict is guilty or not guilty. The issue of  
8 punishment in the event of a conviction is for the Court  
9 alone. You should base your verdict entirely upon the  
10 testimony and the items that have been received in court and  
11 upon the law that I have given you in these instructions.  
12 You may not base a verdict on anything you may have heard or  
13 seen elsewhere about this case.

14 So, ladies and gentlemen, when you go back to the  
15 jury deliberations room, you can bring your instructions  
16 that you have and you will also have 18 verdict forms  
17 (indicating). There are nine charges. There is a guilty  
18 and a not guilty form for each of the charges. So on the  
19 verdict forms, this happens to be Count 1 (indicating), it's  
20 got "State of Minnesota, District Court, County of Dakota,  
21 First Judicial District. State of Minnesota, Plaintiff, vs.  
22 Brian George Fitch, Defendant"; the File Number for the  
23 Dakota County file and this happens to be the "Verdict of  
24 Guilty."

25 And then there's going to be a corresponding

1 "Verdict of Not Guilty," and right underneath the verdict it  
2 says Count 1. Count 1 (indicating).

3 Similarly, there will be a Count -- two for Count  
4 2, a guilty and a not guilty; and Count 3 and so on. "We,  
5 the jury, find the Defendant guilty of the charge of Murder  
6 in the First Degree, Officer Scott Patrick, in violation of  
7 Minnesota Statutes 609.185, subdivision (a)(4); 609.106,  
8 subdivision 2(1)." Those are the laws that apply to that  
9 particular crime. If you find him not guilty, "We, the  
10 jury, find the Defendant not guilty of the charge of Murder  
11 in the First Degree, Officer Scott Patrick, in violation of  
12 Minnesota Statutes 609.185, subdivision (a)(4); 609.106,  
13 subdivision 2(1)."

14 So once you have a unanimous verdict, the  
15 foreperson alone will sign on the appropriate line  
16 (indicating); and that's representing then that all 12  
17 jurors, there will be 12 of you deliberating on this case,  
18 agree with that verdict (indicating). So only one verdict  
19 will be filled out for each of the counts, either guilty or  
20 not guilty.

21 And here is Count 2, we have guilty or not guilty.  
22 (Reading) We, the jury, find the Defendant guilty or not  
23 guilty, depending on what you find, of the charge of  
24 Attempted Murder in the First Degree, Officer Timothy Bohn,  
25 in violation of Minnesota Statute 609.185(a)(4); 609.17.



1 Again there's a signature line for the foreperson and on all  
2 of these it also has the date and time that you will fill in  
3 for when you've arrived at your verdict.

4 And we have guilty and not guilty forms for Count  
5 3. (Reading) We, the jury, find the defendant guilty or not  
6 guilty of the charge of Attempted Murder in the First  
7 Degree, Sergeant Don Benner, in violation of Minnesota  
8 Statute 609.185(a) (4); 609.17.

9 Count 4, guilty or not guilty. (Reading) We, the  
10 jury, find the defendant guilty or not guilty of the charge  
11 of Attempted Murder in the First Degree, Commander Karsten  
12 Jeffrey Winger, in violation of Minnesota Statute  
13 609.185(a) (4); 609.17.

14 Count 5. (Reading) We, the jury, find the  
15 defendant guilty or not guilty of the charge of Possession  
16 of a Firearm by an Ineligible Person in violation of  
17 Minnesota Statutes 624.713, subdivision 1(2); 609.11,  
18 subdivision 5(b).

19 Then Count 6. (Reading) We, the defendant, find  
20 the -- we, the jury, find the defendant guilty or not guilty  
21 of the charge of Assault in the Second Degree with a  
22 dangerous weapon, Officer Timothy Bohn, in violation of  
23 Minnesota Statutes 609.222, subdivision 1 (indicating). We,  
24 the jury, find the defendant not guilty -- and I see that  
25 I'm going to have to correct this verdict form because there

1 will also be the question that I mentioned to you; if you  
2 find him guilty there will be a spot where you will write  
3 yes or no to the question, did he use a firearm, if you find  
4 him guilty.

5 Same thing with guilty, not guilty of Assault in  
6 the Second Degree (indicating) involving Commander Karsten  
7 Winger. Same thing, guilty or not guilty, with Sergeant Don  
8 Benner.

9 And then finally, Count 9. (Reading) We, the  
10 jury, find the defendant guilty or not guilty of the charge  
11 of Intentional Discharge of a Firearm in violation of  
12 Minnesota Statute 609.66 (1a) (a) (2).

13 So all 18 of these verdict forms will go back with  
14 you into the deliberations room. All 18 will come back with  
15 you once you have reached a verdict. So there will be nine  
16 that are blank, nine that are signed by the foreperson  
17 alone. The nine that are signed represents that the jury  
18 has reached a unanimous verdict on that count.

19 There will be 12 of you deliberating on this case;  
20 and as I instructed you, all 12 of you must agree in order  
21 to reach a verdict. The verdict is signed by the foreperson  
22 alone. You will insert the date and hour at which you  
23 arrive at the verdict; and you will continue in session  
24 until you deliver the same in open court, unless otherwise  
25 excused by the Court.

1           When you arrive at the verdict, you will notify  
2           the bailiffs, and the Court and the parties will then be  
3           summoned to receive your verdict in open court.

4           During your deliberations you are not to  
5           communicate with anyone outside of the jury room except the  
6           bailiffs. You will be sequestered until you have concluded  
7           your deliberations, including overnight if necessary. If  
8           you have a need to communicate with someone such as a family  
9           member, the bailiffs can assist you. If you have a question  
10          about any part of the testimony or desire for information  
11          upon any point of law, communicate your request to the  
12          bailiff in writing. In that event, if you do send out a  
13          question, be aware that first they have to locate me; we  
14          then contact the attorneys; the attorneys and I gather, we  
15          discuss the question and what answer we're going to give.  
16          Mr. Fitch is present as well. And then you are typically  
17          summoned into court where I would read the question, then  
18          the answer to you. So if you do send out a question, be  
19          aware that it takes some time before you receive an answer  
20          from me. It's not that we're ignoring you. It's that we  
21          are going through the process that the rules require we go  
22          through before I answer the question.

23          Also, the gun is not going to be going back with  
24          you physically for deliberations. You have the photo of the  
25          gun. Should you wish to examine the gun, we would have you

1 brought into open court where that would be done. Just for  
2 obvious reasons we don't want the gun going back where it's  
3 not under the Court's control.

4 Similarly, if you wish to see any of the videos or  
5 the audio, we would have you brought into open court and it  
6 would be played for you. And so the -- while you'll have  
7 the CDs, if you want them played, we'll have you brought in  
8 so that you can see them.

9 Finally, in considering the case, remember that  
10 you are not partisans or advocates, but that you are judges  
11 of the facts. The final test of the quality of your service  
12 lies in your arriving at a just and fair verdict. Again  
13 thank you very much for your service.

14 Counsel, do you wish to call the Court's attention  
15 to any errors, omissions or corrections in the instructions?

16 MR. PROKOPOWICZ: The State has none, Your Honor.

17 MS. TRAUB: No. Thank you.

18 THE COURT: Ladies and gentlemen, as I indicated,  
19 there are two alternates; and the reason we have alternates  
20 is because if someone became sick or had a family emergency  
21 or some type of emergency and had to be excused, we could  
22 continue with the trial. And so before I excuse the  
23 alternates, I want to know if of any you are ill or if any  
24 of you have any emergencies happening at home that you want  
25 me to be aware of?

1 (No response.)

2 THE COURT: Nobody raised their hand. You've been  
3 a very attentive jury. We all thank you very much for that.  
4 And I am going to excuse Jurors 67 and 74. That is because  
5 you were the last two seated. It's not that anyone doubts  
6 that you are fair or anything of the sort. Once you are  
7 brought back to the deliberations room, I'm happy to talk to  
8 you two if you want to talk to me; you don't have to, but if  
9 you want to you can. And I would ask simply that you not  
10 discuss the case until you have heard that the jury has  
11 reached a verdict; so that you not discuss it until the  
12 verdict is reached. At that point you would be free to  
13 discuss it with whomever you wish.

14 Then would you please swear the court attendants,  
15 the bailiffs.

16 (Jury attendants/bailiffs sworn.)

17 THE COURT: Thank you. You may take the jurors  
18 then. And for you two ladies, if you want to talk to me,  
19 I'll just meet you out in the back hallway in a minute or  
20 two.

21 THE DEPUTY: Please rise.

22 (Jury excused to begin deliberations.)

23 THE DEPUTY: You may be seated.

24 THE COURT: The record should reflect that the  
25 jury went out at 12:10. And, Counsel, there was, as I

1 mentioned, an error in the verdict form; so I don't want you  
2 to take off for lunch just yet because I want you to review  
3 the verdict forms before I give them to the jurors. I'd  
4 also like you to take a look at the exhibits before they go  
5 back to the jurors.

6 Ladies and gentlemen, my plan then is to, I'll  
7 contact the attorneys if there should be a question; and  
8 then the attorneys would be responsible for notifying you if  
9 you wish to be present during any questions or anything like  
10 that. Once there is a verdict that has been received or  
11 once I'm notified that there is a verdict, I will notify  
12 counsel and I will notify Kyle Christopherson from the State  
13 Court Communications Office; and then we will gather and I  
14 would hope that we would all be gathered within a half an  
15 hour; so if you want to be here for the verdict, please  
16 don't go further than a half hour away from the courthouse.  
17 And I want to thank you all for how you've behaved during  
18 the trial. You've all been very conscientious and  
19 respectful of the court process, and I really appreciate  
20 that. So we will be in touch once we have a verdict. Thank  
21 you.

22 THE DEPUTY: Please rise.

23 (Jury Trial in recess during deliberations.)

24 (During deliberations, the following takes place  
25 outside the presence of the jury:)

1 THE COURT: The record should reflect that the  
2 parties are present, the jury is not, and we are in open  
3 court at 3:35. A question came out from the jurors and it  
4 says: (Reading) Your Honor, the members of the jury would  
5 like to examine the physical gun to determine the side of  
6 the gun the ejection port is located. And it is signed by  
7 the juror foreman, who I believe to be Juror Number 17. And  
8 so we are here about to call the jurors into open court so  
9 they can look at the gun; and what I will propose is that  
10 the clerk put the gun on the table in front of the bench and  
11 then the jurors can come up and look at it. And then when  
12 they're done, they'll go back into the deliberations room.

13 Is that okay with the State?

14 MR. PROKOPOWICZ: The State has no objection to  
15 that procedure, Your Honor.

16 THE COURT: Ms. Traub?

17 MS. TRAUB: We would not agree to that, Your  
18 Honor. There was no testimony on how this gun functioned,  
19 and allowing to the jury to come in and look at this for the  
20 purpose of determining how a cartridge case was ejected  
21 would lead to speculation on their part. There are many  
22 ways in which a case can be ejected. An ejection depends on  
23 any number of factors, including the angle of the gun and  
24 whether it was canted when it was fired. If the Court is  
25 inclined to allow the jury to look at the gun, we would ask

1 that they be given a cautionary instruction that they are  
2 not to infer any information or speculate with regard to the  
3 manner of function of the firearm, because there was no  
4 testimony received regarding that.

5 THE COURT: Well, I think they have the right to  
6 see the gun because it's been introduced into evidence, so  
7 that as -- so I'm going to do that regardless. But as it  
8 relates to giving them a cautionary instruction, Mr.  
9 Prokopowicz?

10 MR. PROKOPOWICZ: The State would oppose any  
11 cautionary instruction. We don't know what the jury is  
12 thinking or not thinking on this particular issue. They've  
13 asked to look at the gun. That's all that should be  
14 required, that they look at the gun, without any additional  
15 instructions.

16 THE COURT: Yeah, I'm not going to get into the  
17 jury deliberations. I think that's for them to deliberate,  
18 and so I'm going to deny the request to give them a specific  
19 instruction, and I am going to allow them to see the gun.  
20 So would you call in the jurors, please.

21 JURY ATTENDANT: Do you want them in their seats  
22 or --

23 THE COURT: Yeah, they'll have to be in their  
24 seats at first.

25 JURY ATTENDANT: Okay.



1 THE DEPUTY: Please rise for the jury.

2 (Jury enters the courtroom, after which the  
3 following takes place in their presence:)

4 THE DEPUTY: Please be seated.

5 THE COURT: Are you Juror Number 17?

6 JUROR FOREPERSON: I am.

7 THE COURT: And are you the foreperson?

8 JUROR FOREPERSON: I am.

9 THE COURT: And it's my understanding that the  
10 jurors would like to look at the gun, is that correct?

11 JUROR FOREPERSON: Correct.

12 THE COURT: And we have the gun here. And what  
13 I'm going to do, folks, is let you come down, take a look at  
14 it; and then when you're done, we'll have you go back into  
15 your deliberations room. While you are looking at it,  
16 please don't talk amongst yourselves or do any deliberating;  
17 but you're welcome to come on down and take a look at it;  
18 and then when you've looked at it to your heart's content,  
19 go back into the deliberations room. Come on down.

20 UNIDENTIFIED JUROR: Can we flip it over?

21 THE COURT: (Moves head up and down.)

22 (Jurors examine the gun exhibit.)

23 JURY FOREPERSON: I think that was all we needed.

24 THE COURT: Thank you.

25 THE DEPUTY: Please rise.

1 (Jury excused from the courtroom to continue  
2 deliberations, after which the following takes place outside  
3 the presence of the jury:)

4 JURY ATTENDANT: May I go out this way, Your Honor  
5 (indicating)?

6 THE COURT: Yes, you may. Then the jurors have  
7 gone back into their deliberations room.

8 THE DEPUTY: Please be seated.

9 THE COURT: It is now 4:16 and they're continuing  
10 in deliberations. So again just don't be more than a half  
11 hour away. We will be in adjournment until they tell us  
12 they're ready for us.

13 (Jury Trial in recess during deliberations.)

14 (At approximately 9:53 p.m., the following  
15 proceedings take place outside the presence of the jury:)

16 THE COURT: The record should reflect that the  
17 jurors are not present, Counsel and Mr. Fitch are. We're in  
18 open court and I was notified just a short time ago,  
19 probably about a half hour ago actually, that the jury had a  
20 verdict and so we need to knock on the door and see if  
21 they're ready to come out.

22 (Pause for jurors.)

23 THE DEPUTY: Please rise for the jury.

24 (Jury enters the courtroom, after which the  
25 following takes place in their presence:)

1 THE DEPUTY: Please be seated.

2 THE COURT: Mr. Foreperson, have the jurors  
3 reached a verdict?

4 JURY FOREPERSON: We have.

5 THE COURT: And do you have all 18 verdict forms  
6 with you?

7 JURY FOREPERSON: We do.

8 THE COURT: Okay. Who's going to --

9 THE CLERK: Jury attendant.

10 THE COURT: Would you please retrieve the  
11 verdicts.

12 (Jury Foreperson hands the verdicts to the jury  
13 attendant, who hands the same to the Court to examine.)

14 THE COURT: I'm going to ask the clerk to read the  
15 verdicts.

16 THE CLERK: (Reading) "State of Minnesota vs.  
17 Brian George Fitch. Count 1. We, the jury, find the  
18 defendant guilty of the charge of Murder in the First  
19 Degree, Officer Scott Patrick.

20 "Count 2. We, the jury, find the defendant guilty  
21 of the charge of Attempted Murder in the First Degree,  
22 Officer Timothy Bohn.

23 "Count 3. We, the jury, find the defendant guilty  
24 of the charge of Attempted Murder in the First Degree,  
25 Sergeant Don Benner.

1 "Count 4. We, the jury, find the defendant guilty  
2 of the charge of Attempted Murder in the First Degree,  
3 Commander Karsten Jeffrey Winger.

4 "We, the jury -- or Count 5. We, the jury, find  
5 the defendant guilty of the charge of Possession of a  
6 Firearm by an Ineligible Person.

7 "Count 6. We, the jury, find the defendant guilty  
8 of the charge of Assault in the Second Degree with a  
9 Dangerous Weapon, Officer Timothy Bohn.

10 "Count 7. We, the jury, find the defendant guilty  
11 of the charge of Assault in the Second Degree, Sergeant Don  
12 Benner.

13 "Count 8. We, the jury, find the defendant guilty  
14 of the charge of Assault in the Second Degree with a  
15 Dangerous Weapon, Commander Karsten Jeffrey Winger.

16 "Count 9. We, the jury, find the defendant guilty  
17 of the charge of Intentional Discharge of a Firearm."

18 Juror Number 1, is this your verdict?

19 JUROR NO. 1: Yes.

20 THE CLERK: Juror Number 7, is this your verdict?

21 JUROR NO. 7: Yes.

22 THE CLERK: Juror Number 17, is this your verdict?

23 JUROR NO. 17: Yes.

24 THE CLERK: Juror Number 21, is this your verdict?

25 JUROR NO. 21: Yes.

1 THE CLERK: Juror Number 22, is this your verdict?

2 JUROR NO. 22: Yes.

3 THE CLERK: Juror Number 24, is this your verdict?

4 JUROR NO. 24: Yes.

5 THE CLERK: Juror Number 36, is this your verdict?

6 JUROR NO. 36: Yes.

7 THE CLERK: Juror Number 42, is this your verdict?

8 JUROR NO. 42: Yes.

9 THE CLERK: Juror Number 48, is this your verdict?

10 JUROR NO. 48: Yes.

11 THE CLERK: Juror Number 60, is this your verdict?

12 JUROR NO. 60: Yes.

13 THE CLERK: Juror Number 63, is this your verdict?

14 JUROR NO. 63: Yes.

15 THE CLERK: Juror Number 66, is this your verdict?

16 JUROR NO. 66: Yes.

17 THE COURT: Ladies and gentlemen, thank you very  
18 much for your attention and your service these past few  
19 weeks.

20 THE DEFENDANT: Thanks for your bias-ass,  
21 bullshit-ass case, you -- oh, my God.

22 THE COURT: We very much appreciate it, and I will  
23 be coming back into the jury room to visit with you in just  
24 a few minutes.

25 THE DEFENDANT: I'm sure you will.

1 THE COURT: I have some business I need to do with  
2 the attorneys first.

3 THE DEFENDANT: Fuck that.

4 You threw this whole case from the beginning.  
5 From the beginning.

6 THE COURT: Will you take the jurors, please.

7 (Jury excused from the courtroom, after which he  
8 following takes place out of their presence:)

9 THE DEFENDANT: Every -- every single -- every  
10 single thing that came up, you overruled every fucking one  
11 of them.

12 THE COURT: Would you take Mr. Fitch out, please.

13 THE DEFENDANT: Take me out. I don't care.  
14 Stupid-ass bitch.

15 Fucking stare at me, bitch.

16 (Defendant exits the courtroom.)

17 THE COURT: So, folks, we'll set the case for  
18 sentencing in Dakota County at the Hastings Government  
19 Center at 9 o'clock on Wednesday and that will be February  
20 -- February 4th at 9 o'clock in Hastings. So we will be  
21 adjourned until then.

22 UNIDENTIFIED VOICE: Thank you, Your Honor.

23 (Jury Trial proceedings come to a final close.)  
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CERTIFICATE

I, RHONDA FRANKEN, a Registered Merit Reporter, do hereby certify that the foregoing pages of typewritten material constitute a full, true and correct transcript of my original Stenographic notes, as they purport to contain, of the proceedings reported by me at the time and place hereinbefore mentioned.

DATED: August 14, 2015

/s/ \_\_\_\_\_

Rhonda Franken, RMR  
Court Reporter  
First Judicial District

Distribution: Original - eFiled  
cc - Thomas Ragatz, Ramsey/Dakota County Attorney  
cc - Melissa Sheridan, State PD's Office

