

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota,

Plaintiff,

vs,

DAVID AKER,

JAKOB HALLDOR ALTMAN,

BRANDON AMI,

TY BRAY,

ALEX CHABBOT,

ALICIA DVORAK,

BRENNAN HAY,

BRIAN HEYNEN,

MICHAEL MILLER,

JEFFREY NICHOLS-HAINING,

CODY SAINT,

JAMES TROY,

ALEX WILSON,

Defendants.

**STATE'S RESPONSE TO AND REQUEST  
FOR DISCOVERY AND NOTICE OF  
INTENT TO USE EVIDENCE  
(N.D. R. Evid. 707 Notice of Intent)**

30-2016-CR-1339

30-2016-CR-1336

30-2016-CR-1341

30-2016-CR-1346

30-2016-CR-1343

30-2016-CR-1342

30-2016-CR-1340

30-2016-CR-1335

30-2016-CR-1361

30-2016-CR-1348

30-2016-CR-1354

30-2016-CR-1353

30-2016-CR-1337

[¶1] The State of North Dakota, through Morton County State's Attorney Allen Kopyy, hereby responds to the defendant's Request for Discovery and/or Request for Notice of Prosecution's Intent to use Evidence as follows:

[¶1a] The State has provided copies of all relevant written statements made by the Defendant at present within the possession, custody or control of the prosecution. The State has also provided the substance of any oral statement that the prosecution intends to offer in evidence at the trial made by the defendant. There is no recorded testimony of the Defendant before a grand jury in this matter. All relevant information is contained within the State's file which is open to the Defendant.

[¶1b] The State's file in this case is open to the defendant and will continue to be. All items of evidence collected in this case are in the custody of the Morton County State's Attorney or accessible by that office or at Morton County District Court and may be inspected by the Defendant when and if appropriate arrangements are made with the Morton County State's Attorney or the Morton County District Court, and/or the Morton County Recorder.

[¶1c] The Defendant may inspect and copy any results or reports of physical or mental examinations, or copies, thereof, within the possession, custody or control of the prosecution, which may be material to the preparation of the defense or which the prosecution intends to use as evidence in the case in chief at the trial. Copies of any such materials are contained in the State's file which is open to the Defendant.

[¶1d] The Defendant has been provided with copies of all written confessions, admissions, or statements of co-defendants.

[¶1e] A list of the names and addresses of all prospective prosecution witnesses, to the best of the knowledge of the State at this time, is provided below.

[¶1f] The Defendant has been provided with copies of all relevant statements of any person relating to the investigation of this action and of the investigation of any witnesses to the best of the knowledge of the prosecution. Upon request the defendant may inspect the file, as well as any physical evidence, audio and/or video recordings and the like, to insure full discovery.

[¶1g] The State objects to the Defendant's discovery request to the extent it seeks materials not discoverable under Rule 16 of the North Dakota Rules of Criminal Procedure; or the mandates of *Brady v. Maryland*, 373 U.S. 83(1963), and the Jencks Act.

[¶1h] Any material requested which is a matter of public record, and which can be discovered through independent requests of defendant upon the custodian of those records does not accompany this return. *State v. Thomas*, 420 N.W.2d 747(ND 1988).

[¶1i] Audio/Videotape evidence, if any, is available for inspection and duplication by request made to the evidence custodian of the applicable law enforcement agency.

**[¶1j] Notice of Intent to use Analytical Report:** Pursuant to rule 707 of the North Dakota Rules of Evidence the State hereby notifies the defendant that the State intends to introduce an analytical report issued under N.D.C.C. chapters 19-03.1, 19-03.2, 19-03.4, 20.1-13.1, 20.1-15, 39-06.2, or 39-20 in any criminal trial in which such an analytical report exists.

**[¶1k] Reciprocal Discovery:** By this response the State hereby requests all information and material discoverable by the prosecution within the authority of Rule 16 of the North Dakota Rules of Criminal Procedure.

**[¶11] Transcripts:** The State does not intend to transcribe any audio/video evidence provided as discovery and maintains that the evidence provided is the best existing form of the evidence in compliance with Rules 1001-1003 of the North Dakota Rules of Evidence.

**[¶2]** The State has maintained an open file in this matter and will continue to do so. The Defendant is hereby notified that any additional information relevant to the Defendant's request received by the prosecution will be placed in the file and will be available for inspection by the Defendant.

**STATE'S WITNESSES:**

**Jay Gruebele, MCSO  
Mandi Snyder, MCSO  
Ricky Olsen, MCSO  
Bob Ziebarth, MCSO  
Matt Murphy, MCSO  
Michael Wood, MPD  
Nathaniel Younkin, SCSO  
Jarod Matzke, ND Parks  
Brian Mehlhoff, NDHP  
Jacob Jones, NDHP  
Trent Wangen, BCSO  
Cody Berger, BPD**

Dated this 21<sup>st</sup> day of March, 2017.

/s/ Gabrielle J. Goter  
Gabrielle Goter (ND #06595)  
Assistant Morton County State's Attorney  
Morton County Courthouse  
210 2nd Avenue NW  
Mandan, ND 58554  
Tel. 701-667-3350  
E-serve: mortonsa@mortonnd.org

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SOUTH CENTRAL JUDICIAL DISTRICT

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JEFFREY NICHOLS-HAINING,  
CODY SAINT,  
JAMES TROY,  
ALEX WILSON,

Defendants.

**CERTIFICATE OF SERVICE  
VIA U.S. MAIL AND  
ELECTRONIC FILE AND SERVE**

30-2016-CR-1339  
30-2016-CR-1336  
30-2016-CR-1341  
30-2016-CR-1346  
30-2016-CR-1343  
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30-2016-CR-1361  
30-2016-CR-1348  
30-2016-CR-1354  
30-2016-CR-1353  
30-2016-CR-1337

I hereby certify that on the 21<sup>st</sup> day of March, 2017, a true and correct copy of the  
**STATE'S DISCOVERY RESPONSE and REQUEST and NOTICE of INTENT**  
(N.D.R.Evid. 707) was served on the following:

David Aker	William Thomason	<a href="mailto:wthomasonjtw@gmail.com">wthomasonjtw@gmail.com</a>
Jakob Halldor Altman	Kent Morrow	<a href="mailto:morrow@midconetwork.com">morrow@midconetwork.com</a>
Brandon Ami	Jessica Hibl	<a href="mailto:jmhibl@gmail.com">jmhibl@gmail.com</a>
Ty Bray	Thomas Glass	<a href="mailto:tjglaw@midconetwork.com">tjglaw@midconetwork.com</a>
Alex Chabbot	William Hartl	<a href="mailto:hartllaw@gondtc.com">hartllaw@gondtc.com</a>
Alicia Dvorak	Alex Kelsch	<a href="mailto:alexk@kelschlaw.com">alexk@kelschlaw.com</a>
Brennan Hay	Steven Fischer	<a href="mailto:steve@dakotadefense.com">steve@dakotadefense.com</a>
Brian Heynen	James Loraas	<a href="mailto:bismanpublicdefender@nd.gov">bismanpublicdefender@nd.gov</a>
Michael Miller	7052 Del Norte Dr., Goleta, CA 93117	
Jeffrey Nichols-Haining	Alex Kelsch	<a href="mailto:alexk@kelschlaw.com">alexk@kelschlaw.com</a>
Cody Saint	Kevin McCabe	<a href="mailto:kmccabe@nd.gov">kmccabe@nd.gov</a>
James Troy	Steven Fischer	<a href="mailto:steve@dakotadefense.com">steve@dakotadefense.com</a>
Alex Wilson	141 Lansdale Ave, Fairfax, CA 94930	

/s/ Gabrielle J. Goter  
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