

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,)	
)	DEFENDANT WAYNE MICHAEL
Plaintiff,)	FISHER'S MOTION TO SUPPRESS ALL
)	EVIDENCE OBTAINED FROM
vs.)	UNLAWFUL SEARCHES AND
)	SEIZURES
Wayne Michael Fisher,)	
)	Crim. No. 19-320 (SRN/LIB)
Defendant.)	

Defendant Wayne Michael Fisher, through his counsel, Daniel L. Gerdts, Esq., respectfully requests the Court to suppress all evidence obtained in any search and seizure, and all evidence derived from such search and seizure, in violation of Defendant's rights under the Fourth Amendment to the United States Constitution. Fed. R. Crim. P. 12(b)(3).

The discovery disclosed to date reveals the existence of a variety of searches and seizures – as set forth below with specificity – all of which are contested by this motion.

1) The warrantless GPS and cell tower tracking of Defendant's mobile phone beginning on or about 26 July 2016. The discovery suggests that law enforcement applied for a court order to permit the tracking and to obtain historical and other information regarding the mobile phone and account. The warrantless search and

seizure of the location information and data was conducted in violation of *Carpenter v. United States*, ___, U.S. ___, 138 S. Ct. 2206 (2018).

2) The warrantless search and seizure of Defendant's person and vehicle on 27 July 2016 during what is claimed to have been a traffic stop by a state trooper.

3) The later search (on or about 30 July 2016) of Defendant's Chrysler 300 that was seized after the purported traffic stop on 27 July 2016. This search is alleged to have been effected pursuant to a warrant.

4) The search and seizure of the contents of Defendant's mobile phone on or about 5 August 2016, that is alleged to have been executed pursuant to a warrant.

5) The search and seizure of Defendant's person and the home at which Defendant was a guest on 27 June 2019, and the search of his vehicle on the same day. These searches are purported to have been executed pursuant to a warrant allegedly issued by a tribal court, the validity of which is specifically here contested.

Defendant contests the lawfulness of the searches and seizures on the grounds that they were either warrantless searches and seizures not justified by any exception to the warrant requirement, or if warrants exist, that the warrants were not supported by probable cause, were not supported by oath or affirmation, were overly-broad, and failed to specify the evidence to be seized. The Supreme Court has repeatedly observed the "cardinal principle," *Mincey v. Arizona*, 437 U.S. 385, 390 (1978), that searches and seizures "conducted outside the judicial process, without prior approval by judge

or magistrate, are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357 (1967); accord *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993). It is well recognized that the burden is on the government to prove that such *per se* unreasonable searches and seizures comported with the requirements of the constitution. *United States v. Rouse*, 148 F.3d 1040, 1041 (8th Cir. 1998). The arguments regarding probable cause, oath or affirmation, lack of specificity, and overbreadth would be made after the hearing, on the four-corners of the warrants and applications, assuming such warrants are produced and offered by the Government. Likewise, the validity of the alleged tribal warrant is largely a legal matter to be addressed in a memorandum of law.

Counsel for the parties conferred by telephone regarding these motions. Counsel for the Government opposes the motion, and will respond appropriately.

Dated: 21 January 2020

Respectfully submitted,

DANIEL L. GERDTS, LAWYER

s/ Daniel L. Gerdts

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