

STATE OF MICHIGAN

IN THE 53RD JUDICIAL DISTRICT COURT

PEOPLE OF THE STATE OF MICHIGAN,

vs

Case No. 21-1426-FY

PHILIP GERHARD NEUMEIER,

Defendant.

PRELIMINARY EXAMINATION

BEFORE THE HONORABLE DANIEL B. BAIN

Howell, Michigan - Tuesday, February 15, 2022

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248-245-6610

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Howell, Michigan
Tuesday, February 15, 2022

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(At 1:56 p.m., proceedings begin)

THE COURT: Calling 21-1426-FY, People versus Philip Neumeier. Time and date set for a preliminary exam in this matter.

Appearances, please?

MR. SIZEMORE: Good afternoon, Your Honor. Rolland Sizemore appearing on behalf of the People.

MR. METZ: Good afternoon, Your Honor. Jim Metz appearing on behalf and with Mr. Neumeier.

THE COURT: All right. Thank you.

Today is the time and date set for the exam. It's Count I, second degree arson, and Count II is arson, preparation to burn a dwelling. That's what we're dealing with, correct, Mr. Sizemore?

MR. SIZEMORE: Yes, Your Honor.

THE COURT: All right. Is everything you had set up now going haywire on you?

MR. SIZEMORE: Yeah, it is. My keyboard's not working.

THE COURT: Oh, jeez.

MR. SIZEMORE: I wonder if I've got to unplug this. Well, that was interesting.

1 Sorry, Judge.

2 THE COURT: You know, I'm just holding off for a
3 minute while you get set up as opposed to pausing after
4 that.

5 MR. SIZEMORE: Yeah. I think it was this -- I
6 think someone made me use a converter that's making my
7 laptop act up.

8 Okay. Thank you. I am ready to go.

9 THE COURT: Is it working now?

10 MR. SIZEMORE: Yes, sir.

11 THE COURT: All right. And if we need to, we
12 can put the cord back up and we'll eliminate the safety
13 hazard and put up a little traffic cursor cone or
14 something.

15 Okay. Any prehearing matters we've got to deal
16 with?

17 MR. SIZEMORE: No, Your Honor. Thank you.

18 THE COURT: Okay. And then just order mutual
19 witness sequestration. Doesn't -- looks like we only have
20 two persons in the courtroom, so it doesn't seem like it's
21 a big issue, but it's ordered anyways.

22 Mr. Sizemore, would you call your first witness?

23 MR. SIZEMORE: Yes, Your Honor. We'll call
24 Jordan Zernick.

25 THE COURT: Okay.

1 Come on up, sir. Get in there just kind of
2 close to the mic.

3 Raise your right hand, state your name and spell
4 your last for me, please.

5 JORDAN ZERNICK: Jordan Zernick, Z-e-r-n-i-c-k.

6 THE COURT: Mr. Zernick, do you swear or affirm
7 the testimony you are about to give will be truthful?

8 THE WITNESS: Yes.

9 (At 1:58 p.m., witness sworn)

10 THE COURT: Thanks. You can have a seat. You
11 can take your mask off if you want.

12 THE WITNESS: Okay.

13 THE COURT: Have you testified before?

14 THE WITNESS: No.

15 THE COURT: Okay. So the Defense attorney and
16 Prosecutor will be asking you a series of questions. And
17 I need you to answer yes, no, or whatever the answer may
18 be. It needs to be a verbal response.

19 THE WITNESS: Okay.

20 THE COURT: If for some reason you don't
21 understand a question, ask them to repeat it; they'll be
22 happy to do so, okay?

23 THE WITNESS: Yes, sir.

24 THE COURT: All righty. And just speak up good
25 so we can get everything recorded.

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THE WITNESS: Okay.
THE COURT: Go ahead, Mr. Sizemore. I'm sorry.
MR. SIZEMORE: That's okay. Thank you.

JORDAN ZERNICK

called as a witness, testified as follows:

DIRECT EXAMINATION

BY MR. SIZEMORE:

Q Can you state and spell your first and last name for the record, please?

A Jordan Zernick. J-o-r-d-a-n, Z-e-r-n-i-c-k.

Q And how are you employed?

A I'm employed by the Hamburg Township Fire Department.

Q In what capacity?

A I'm the fire marshal.

Q How long have you been fire marshal in Hamburg?

A Four years.

Q Okay. How long -- are you a fire fighter?

A Yes.

Q How long have you been a fire fighter?

A Thirteen years.

Q All in Hamburg?

A Yes.

Q Okay. What are your primary responsibilities as fire marshal?

A I conduct the origin cause investigations for the -- the

1 fire department, as well as doing the life safety hazard
2 inspections and -- for both residential and commercial
3 occupancies.

4 Q Okay. I'm going to take you way back to 2019,
5 specifically November 19th of 2019.

6 Were you fire marshal then?

7 A Yes.

8 Q And did you have occasion to respond to 7809 Winans Lake
9 Road?

10 A Yes.

11 Q What was the reason for your dispatch there?

12 A A report of residential structure fire.

13 Q And explain how -- what your response to -- Hamburg
14 Township's response is, other local fire departments, what
15 happened?

16 A So we respond -- we have a automatic mutual aid agreement
17 with neighboring communities. Hamburg Fire will do a all
18 call response, so all of our apparatus and personnel will
19 respond to the incident, as well as mutual aid from Green
20 Oak Township, a neighboring community, and backfill from
21 Brighton Area Fire Authority.

22 Q Okay. On this scene on Winans Lake Road back in November
23 of 2019, how many different departments responded?

24 A Three. The three that I just listed.

25 Q Okay. Perfect.

1 Who, if you know, was first to arrive at the
2 scene?

3 A Fire Chief Nick Miller.

4 Q Sorry?

5 A Nick Miller, the fire chief.

6 Q Of Hamburg?

7 A Correct.

8 Q Okay. And when did you arrive on the scene?

9 A Within minutes. I was the driver operator of the first
10 engine on scene.

11 Q Okay. Can you describe the scene when you arrived?

12 A When we arrived, there was a significant fire involved in
13 the garage portion of the structure. At that point, we --

14 Q Let me stop you real quick.

15 Can you describe the structure?

16 A From the -- from the driveway side, it appears as a
17 three-story structure with a basement, first, and second
18 floor, the garage being attached to -- we'll call it the
19 basement.

20 Q So it's a walkout basement?

21 A Correct.

22 Q Okay. Thank you.

23 So -- and there was fire in the garage area when
24 you arrived, is that what you said?

25 A Correct.

1 Q Okay. Continue, please.

2 A So there was fire in the garage. The first engine on
3 scene deployed a two-and-a-half preconnected line and
4 began to suppress the fire from the exterior in the garage
5 area while crews donned the appropriate PP to make entry
6 into the garage area, and then into the basement.

7 Q Are you -- do you have any sort of idea of the response
8 time from when -- that you first got the call to how long
9 you arrived?

10 A I believe it was less than ten minutes.

11 Q Okay. Was the -- if you can answer this, I don't know
12 maybe a percentage or use your own way, but how much of
13 this house was on fire? Was this a big fire?

14 A I would say with a percentage number, you could say maybe
15 25 percent of the building -- the visible building from
16 the backside was on fire.

17 Q And were you all able to suppress the fire?

18 A Yes.

19 Q How long did it take to suppress this fire?

20 A It was a matter of minutes from our arrival that we had
21 the fire under control.

22 Q Okay. And is that typical or is that a short period of
23 time or a long period of time?

24 A That's -- I would say, is a short period of time in our
25 rural fire department.

1 Q Okay. At any point, did you meet with somebody who you
2 believed owned the home that day?

3 A Yeah. That day after the fire was out, I was asked by the
4 instant commander to make contact with the homeowner who
5 was reported to me at that time to be standing in the
6 roadway down from the home. That home sits way up on a --
7 on a hill.

8 Q Was that the first time that you became aware that there
9 was a homeowner on site --

10 A Yes.

11 Q -- or near?

12 A Yes.

13 Q So you didn't see anybody at the house when you arrived?

14 A Correct.

15 Q Did you go down to the road?

16 A I did.

17 Q And was there someone standing down there?

18 A There were two individuals standing in the roadway. I was
19 directed to them by the fire chief from Green Oak Township
20 who had spoken with them, and he identified Mr. Neumeier
21 as the homeowner.

22 Q And did you speak with the homeowner at that time?

23 A I did.

24 Q Do you see that person here in the courtroom?

25 A I do.

1 Q Could you please --

2 MR. METZ: We'll stipulate to ID, Judge.

3 THE COURT: Okay.

4 MR. SIZEMORE: Thank you.

5 THE COURT: Identification has been established.

6 BY MR. SIZEMORE:

7 Q Did you go down there because you were understanding that
8 Mr. Neumeier wanted to speak to you or did you want to
9 speak to him or both?

10 A Both.

11 Q Okay. Tell us about the first conversation you had with
12 him.

13 A I informed Mr. Neumeier that there was significant fire
14 damage to the basement of his home, that we had the
15 fire -- what we believed to be under control at that time
16 and we were checking the house for extension to ensure
17 that there was no fire that had extended to any other
18 portion of the home, ensuring that everything was out.

19 Q Let me back up for one second.

20 When you arrived, did you go inside the house?

21 A I did.

22 Q To suppress it, I mean, while the fire was active?

23 A Yes.

24 Q Could you hear any smoke alarms?

25 A I don't recall as to whether there was smoke alarms going

1 off at the time in which I was doing fire impression.

2 Q Did you ever hear smoke alarms inside of that house?

3 A Smoke alarms were chirping during the investigation
4 portion of -- of the incident.

5 Q Okay. And that came the same day?

6 A The portion of the investigation, yes.

7 Q Okay. Back to, now, interviewing Mr. Neumeier.

8 How was his demeanor?

9 A He seemed appropriate. He seemed, I guess -- I don't know
10 if I'd say distraught, but he seemed appropriate.

11 Q Okay. What was he telling you during your first meeting
12 with him down on the ground?

13 A His initial response was that he needed to just cool down.
14 And he kept saying, I just need to cool down and that he
15 needed to go get a drink.

16 Q Okay. And you've been a firefighter for 13 years; is that
17 right?

18 A Correct.

19 Q And is that a usual response that you would see from
20 homeowners in your experience?

21 A It is not.

22 Q Okay. What's different about it?

23 A Typically, there's one of two different responses that we
24 get: The extremely distraught individual who is upset
25 about their -- their home being on fire or the individual

1 who just is concerned about what's the next step and did
2 anyone get hurt and those types of things.

3 Q Would you describe Mr. Neumeier's distraught when you were
4 meeting with him?

5 A I would say that he was a version of distraught, yes.

6 Q Okay. Did you advise him that it was okay to go or he
7 shouldn't go or was there anything that you did?

8 A There was nothing that I could do to prevent him from
9 leaving the incident. I advised against it. I told him
10 it was within his best interests to remain on scene in
11 case we had any questions throughout the process. And he
12 informed me that he could be contacted via cell phone if
13 we had any questions.

14 Q Okay. Did there come a time -- well, after that
15 conversation, what did you do next?

16 A I went back up to the incident and continued with the
17 operational portion of -- of the scene for fire
18 suppression and checking for extension.

19 Q Once you were done collectively suppressing the fire,
20 checking for extension, you were satisfied that the fire
21 was out --

22 A Mm-hmm.

23 Q -- what was -- what did you do next?

24 A I transitioned over to an investigative role.

25 Q And what does that mean?

1 A I leave the operations type of atmosphere, and I move into
2 conducting a cause and origin investigation for the
3 incident.

4 Q Prior to Mr. Neumeier leaving the scene to go get a drink
5 and cool down, did you ask him for consent to enter his
6 house and investigate?

7 A I did not at that point in time. We didn't -- it's not
8 required for us to have consent until we relinquish the
9 residence back over to the homeowner.

10 Q Okay. So at some point, did you do a walk through
11 investigation of the house?

12 A That evening, we did a preliminary.

13 Q Who?

14 A Myself and Officer Flavin.

15 Q Okay. And what is involved in a preliminary
16 investigation?

17 A We do a walkaround of the exterior of the home, and then
18 we will also do an interior walk of the -- of the home to
19 begin to conduct the origin cause investigation.

20 Q Okay. Did you see anything remarkable on the exterior of
21 the home during your walkthrough?

22 A We did not.

23 Q Did you see anything remarkable on the interior of the
24 home?

25 A We did.

1 Q Can you describe what you saw?

2 A On our initial observation of the basement, we were able
3 to determine that there were two potential and distinct
4 areas of origin -- potential areas of origin within the
5 basement that did not appear at that time to coincide with
6 one another.

7 Q Can you describe what you mean by that?

8 A I can describe the scene if that's what --

9 Q Sure.

10 A So when we walked in from the garage to the basement,
11 there -- you're confronted with a pool table. At the pool
12 table on the floor was a -- an area directly above that
13 was a floor joist to the first floor that had a
14 significant area of depth of char to the structural
15 members.

16 Q Okay.

17 A Also, directly within the front door and what we'll call
18 the north wall of the basement was the staircase. On the
19 bottom side of the staircase was a significant area of
20 burn that did not appear to -- to travel from one portion
21 to the other.

22 Q So what you're -- if I'm hearing you correctly, you're
23 saying there seemed to be two areas of hot fire --

24 A Correct.

25 Q -- that -- and that their patterns did not meet up

1 together; is that right?

2 A At a preliminary look, correct -- that is correct.

3 Q Okay. And on a preliminary basis, what does that tell you
4 as an investigator, and based on your experience, or what
5 were you suspicious of?

6 A It just becomes suspicious because it's not common to have
7 two separate areas of origin or potential areas of origin
8 within the same space.

9 MR. SIZEMORE: May I approach, Your Honor?

10 THE COURT: Please.

11 BY MR. SIZEMORE:

12 Q May I call you Marshal or Mister or what's your title?

13 A Whatever you'd like.

14 Q Oh, don't do that.

15 Okay. I've laid in front of you what I've had
16 marked as People's Proposed Exhibit Number 11. Do you see
17 that there?

18 A I do.

19 Q Can you describe what that is?

20 A That is the pool table in the basement.

21 Q Okay. And is that a fair and accurate depiction of what
22 the pool table looked like during your walkthrough?

23 A It is.

24 Q Did you take that picture, incidentally, if you know?

25 A Not 100 percent certain, but I would have documented this

1 area, yes.

2 Q Okay.

3 MR. SIZEMORE: Your Honor, move for admission of
4 People's 11.

5 THE COURT: Mr. Metz, any objection?

6 MR. METZ: No.

7 THE COURT: All right. 11 is admitted.

8 (At 2:11 p.m., People's EX-11 was received.)

9 BY MR. SIZEMORE:

10 Q I think I've also given you what I've had marked as
11 People's Proposed Number 5?

12 A Correct.

13 Q And what does that show?

14 A That's the area underneath the staircase of the basement.

15 Q And is that a fair and accurate depiction of the under
16 stair part of the basement when you were there?

17 A It is.

18 MR. SIZEMORE: Move for admission of People's 5.

19 MR. METZ: No objection.

20 THE COURT: 5 will be admitted.

21 (At 2:11 p.m., People's EX-5 was received.)

22 BY MR. SIZEMORE:

23 Q Okay. Let's start with 11.

24 Can you please tell me if there's anything
25 significant in Number 11 -- People's Number 11?

1 A The dark area on the floor in front of the pool table was
2 our potential area of concern. Directly above that area
3 on the floor joists to the first floor is the portion of
4 the joists that had a significant depth of char.

5 Q Even though -- well, when you were doing your
6 investigation on the 19th, was that area depicted in that
7 picture your suspected origin point?

8 A It was a potential origin point.

9 Q Thank you. Okay. Now, move please to People's 5.

10 And is this a picture of what your suspected
11 second origin point is?

12 A The potential origin point, yes.

13 Q And what is notable in that picture that leads you to
14 believe or suspect that it's a potential original point?

15 A The significant depth of char to the bottom side of the
16 staircase with a clean area of -- of structural members
17 directed correlated -- or directly next to them.

18 Q Clean area. What do you mean by that?

19 A If you look at the picture, you have a clean area of
20 structural members directly outside of the bottom side of
21 the staircase which indicates that there was a potential
22 for a isolated fire underneath the staircase.

23 Q So you're seeing an area of a lot of burn next to an area
24 with very little burn --

25 A Correct.

1 Q -- is that what you're saying?

2 A Correct.

3 THE COURT: I've just got a question. So you're
4 talking about -- on 5, you're talking the -- I would
5 describe it as a stud wall that's kind of in front of the
6 picture?

7 THE WITNESS: Correct.

8 THE COURT: And then -- so there's no burn
9 there, and then at the very -- I guess, the front of the
10 stairs, there's no burn on those first two steps, correct?

11 THE WITNESS: Correct.

12 THE COURT: Okay. Thank you.

13 Sorry, Mr. Sizemore.

14 MR. SIZEMORE: No. Not at all, Your Honor. I'm
15 hoping to clear that up right now, if I could approach.

16 THE COURT: Oh, go ahead.

17 BY MR. SIZEMORE:

18 Q I'm showing you what I've marked as People's Proposed
19 Number 4.

20 Does that show the same area as 5?

21 A It does.

22 Q And does that picture accurately depict what that area
23 looked like when you were there?

24 A Yes.

25 MR. SIZEMORE: Move for admission of People's 4.

1 MR. METZ: No objection.

2 THE COURT: 4 will be admitted.

3 (At 2:14 p.m., People's EX-4 was received.)

4 BY MR. SIZEMORE:

5 Q And does that Number 4 show the clean area a little bit
6 more specifically on the right side --

7 A It does.

8 Q -- than maybe 5 does?

9 A It does.

10 Q Okay. When you go into a house, maybe not just during
11 your investigation, but just me walking through a house
12 that's recently had a fire that's been suppressed, can you
13 tell where the fire has been and where it hasn't been,
14 visually?

15 A Yes.

16 Q When you say that these two suspected potential points of
17 origin did not meet, can you explain to the judge what you
18 mean by that?

19 A Based off of the depth of char of the structural members
20 and the patterns on the related walls, it doesn't appear
21 as if there was any fire that connected amongst the two
22 portions of burn --

23 Q Okay.

24 A -- in the basement.

25 Q Did you have suspicions at that time based on your

1 training and experience?

2 A I did.

3 Q What were those suspicions?

4 A The two distinct areas of potential areas of origin.

5 Q And when you have two distinct -- if it were to pan out --

6 A Mm-hmm.

7 Q -- that you had two distinct areas of origin, as an
8 investigator, does that get you thinking one way or
9 another about whether it's an accidental fire?

10 A It's a potential cause of an incendiary report.

11 Q And an incendiary fire means an intentional fire?

12 A Correct.

13 Q Okay. What did you do based on what you saw and what you
14 were starting to think?

15 A At this point, it was getting late into the evening. We
16 deemed it appropriate to back out from the investigation
17 and reconvene the following day. Officer Flavin and I did
18 get in contact with Detective Sergeant Harpe that evening
19 and briefed him on -- on our findings.

20 Q Okay. Now, why did you call Sergeant Harpe who is a
21 police officer in to give him your findings?

22 A Because we found things that were a potential crime.

23 Q Or at least started to look like that?

24 A Sure.

25 Q Okay. What did you do next?

1 A BELFOR Restoration Company was on site. They secured the
2 building and applied what they call an investigation lock.
3 And at that point in time, we held custody of the
4 building.

5 Q When you say an investigation lock, that's a -- the house
6 is secured so no one can get in?

7 A Correct.

8 Q And who holds the key to the lock?

9 A We do.

10 Q And you're the only people that do?

11 A Correct.

12 Q When you say we, you mean the fire department?

13 A Fire department, yes.

14 Q Okay. Then what happened?

15 A We -- at some point in time in this evening, I don't
16 recall as to whether it was before we boarded up the --
17 the house or not, Mr. Neumeier and Mr. Stinson returned to
18 the residence.

19 Q Did you speak with Mr. Neumeier again?

20 A I did, along with Officer Flavin.

21 Q Okay. And tell us what that conversation -- how that
22 went.

23 A We explained the extent of the damage inside the
24 residence. We asked what he had been doing that day,
25 which is a common question we ask homeowners.

1 Mr. Neumeier stated that he was in the process
2 of changing the oil in his whole house generator. He
3 stated that he needed some parts or needed a wrench from
4 the hardware store. And at that point in time, he had
5 left to go to the hardware store to retrieve the wrench
6 and when he returned, we were at his residence.

7 Q Did he have -- did he state anything about the process of
8 changing the oil, what he had done?

9 A I don't believe he talked about that the night of the
10 incident.

11 Q Did he tell you anything else that night?

12 A The only other conversation we had is I gave him the --
13 our normal briefing on, you need to get in contact with
14 your insurance company, ensure that you only talk to your
15 insurance company, as there's individuals that will be
16 trying to contact you to scam you, in essence.

17 And Mr. Neumeier requested that he receive his
18 computer tower from the first floor which, at that point
19 in time, we willingly went and -- and retrieved for him.
20 Mr. Neumeier also indicated that he had a home security
21 camera system within the home and advised us that we could
22 retrieve that and view the footage if we were able to.

23 Q Okay. And did you locate the DVR -- security system?

24 A We did. It was in the front laundry room, I believe.

25 Q Okay. And he gave you consent to take that?

1 A He did.

2 Q Did he give you consent to search that?

3 A He did.

4 Q Was that oral or did you get any sort of written
5 confirmation of that?

6 A It was oral, recorded on body cam by Officer Flavin.

7 Q Understood. While you were -- and this is backing up just
8 a little bit, but while you were investigating, doing your
9 walkthrough with Officer Flavin, did you find any articles
10 of mail?

11 A Not on the initial night, no.

12 Q Understood. When did you go back to that house next?

13 A The following day.

14 Q And what happened then? Who was there and what were you
15 doing?

16 A Myself, Detective Sergeant Harpe, and Officer Flavin were
17 reconvening to conduct the origin and cause investigation.

18 Q Origin and cause investigation. So is this different than
19 what the investigation was when you and Flavin were
20 walking through the house on the 19th?

21 A It was not.

22 Q Is it more involved?

23 A Yes. And the only reason that it stopped the night of the
24 19th was due to the time of evening.

25 Q Gotcha. So now it's light out and you can see a little

1 better?

2 A Correct.

3 Q That make sense?

4 A Yes.

5 Q Okay. Did you find anything noteworthy on the 20th when
6 you walked through?

7 A We observed the same findings that we did the -- the night
8 before with the two potential areas of origin.

9 Q What else?

10 A I'm not certain what you're asking.

11 Q Okay. Did you excavate anything in the basement anywhere?

12 A On that evening, we did not --

13 Q Okay. What --

14 A -- or that afternoon.

15 Q Did you find anything noteworthy that evening on the 20th?

16 A No. We -- we documented the scene with photographs and
17 determined that our appropriate approach would be to back
18 out from the investigation and await contact from the
19 insurance investigators so that we were all looking
20 from -- at the same scene.

21 Q Okay. And did that, in fact, happen?

22 A It did.

23 Q And did you go back to that house with an insurance --
24 independent contractor investigator?

25 A We did, yes.

1 Q And who was that?

2 A Mr. Jeremy Berard.

3 Q Okay. And have you worked with Mr. Berard before?

4 A Before that incident, I had not.

5 Q Okay. So now you go back in the house, right? This is

6 the third time, correct?

7 A Right.

8 Q And this time it's you --

9 A Correct.

10 Q As in mister -- is Sergeant Harpe with you?

11 A He's not.

12 Q Okay. Who went with you?

13 A Myself and Jeremy Berard and the electrical engineer

14 brought in by Mr. Berard.

15 Q Is that Jay Herrick?

16 A I believe so, yes.

17 Q Okay. And during this investigation, did you do any

18 excavating in the house?

19 A We excavated the area underneath the staircase.

20 Q And when you say excavate, tell the judge what you mean by

21 that.

22 A We systematically remove items from underneath the

23 staircase and examine them in the process of.

24 Q I kind of picture like an archeologist or

25 paleontologist --

1 A In essence.

2 Q -- dusting bones. Is that kind of how you -- are you
3 careful during that investigation?

4 A Yes.

5 Q Did you find anything interesting under the stairs?

6 A We located a pan of oil underneath the staircase.

7 Q Okay. Can you describe the pan?

8 A It was a aluminum roasting pan.

9 Q Okay. Was -- and there was oil in it?

10 A Correct.

11 Q What --

12 THE COURT: Could you determine what kind of oil
13 was in it?

14 THE WITNESS: I could not.

15 BY MR. SIZEMORE:

16 Q Have you ever seen a pan of oil under basement stairs
17 before?

18 A Had I ever -- can you ask that again, please?

19 Q Yes. Had you ever, in your investigating, seen a pan of
20 oil of some sort under stairs in someone's basement like
21 that?

22 A I have not.

23 Q Were you able to see that pan of oil before you excavated?

24 A I was not, but Mr. Berard had received a picture of the
25 pan of oil that was placed underneath the staircase.

1 Q Okay. But during your investigation --

2 A Correct.

3 Q -- any of the three times that you were there --

4 A Correct.

5 Q -- did you say, like, walking by --

6 A No.

7 Q -- could you have seen this pan?

8 A We could not.

9 Q Okay. I'm going to show you what's marked as People's
10 Proposed 10.

11 MR. SIZEMORE: You know you have copies only,
12 right?

13 MR. METZ: Yeah. But they're not --

14 MR. SIZEMORE: Okay.

15 MR. METZ: -- in color, so --

16 MR. SIZEMORE: They're not?

17 MR. METZ: Well, maybe they are.

18 MR. SIZEMORE: Oh, all right.

19 May I approach the witness, Your Honor?

20 THE COURT: Yeah. Please do.

21 BY MR. SIZEMORE:

22 Q Showing you what I've marked as People's Proposed Exhibit
23 Number 10.

24 Can you tell the judge what that is?

25 A That is the aluminum roasting pan. You can see the

1 outside border of it.

2 Q Is that pan in that picture there --

3 A Mm-hmm.

4 Q -- is that pan still under the basement stairs?

5 A It is.

6 Q And is that an accurate depiction of what that pan looked
7 like when you were investigating with Mr. Berard?

8 A It is.

9 MR. SIZEMORE: Move for admission of People's
10 10.

11 MR. METZ: No objection.

12 THE COURT: 10 will be admitted.

13 (At 2:24 p.m., People's EX-10 was received.)

14 BY MR. SIZEMORE:

15 Q What else is in that picture?

16 A A halogen lightbulb.

17 Q Okay. And is there anything connected to the halogen
18 lightbulb?

19 A It is in a lamp base.

20 Q Okay. And is there anything else connected to the halogen
21 lightbulb?

22 A There was a -- what we found to be a combustible type
23 material that was wrapped around the halogen lightbulb,
24 which in your photograph, you can see in the top corner.

25 Q I want you to -- I'm going to actually pull that one up,

1 if I'm able to, so that -- oh boy. All right.

2 THE COURT: You're half way.

3 MR. SIZEMORE: We're getting there.

4 BY MR. SIZEMORE:

5 Q Okay. Is that Number 10 there, sir?

6 A Yes.

7 Q Okay. Now, we found out the hard way that laser pointers
8 don't work on these television screens, so I'm going to be
9 your pointer, okay?

10 A Mm-hmm.

11 MR. SIZEMORE: Ms. Tammy, can you hear me if I'm
12 talking over here?

13 THE CLERK: Yes.

14 MR. SIZEMORE: Perfect.

15 BY MR. SIZEMORE:

16 Q So you tell me if I'm wrong. I don't want to put words in
17 your mouth, okay, we're going to try to be careful.

18 Is this the pan?

19 A Yes.

20 Q Okay. Can you tell me where the lightbulb is in this pan?

21 A On the right-hand side of the pan.

22 Q And is this the lightbulb?

23 A That's correct.

24 Q And can you see the lamp in this picture anywhere?

25 A You can see the stem of the lamp if you go straight back

1 from the light, but yes.

2 Q That's the lamp?

3 A That's the portion in which the bulb makes contact with
4 the lamp.

5 Q Okay. Does this bulb screw into this lamp?

6 A Yes.

7 Q And where's the wrap or the combustible material?

8 A Combustible material is on the right-hand side almost
9 directly where your cursor is at.

10 Q Okay. Here's my cursor.

11 This is the combustible material?

12 A Yes. That was removed from the top portion of the lamp
13 during excavation.

14 Q You guys did that?

15 A Correct.

16 Q Before you excavated that, this part of the rag or
17 combustible material was over the bulb?

18 A That's correct.

19 Q Is this part of the combustible material down here,
20 obscuring the bulb?

21 A Yes.

22 Q Was that lamp plugged in?

23 A It was.

24 Q Can you describe the area around the stairs, specifically
25 the area by the stairs and the bathroom?

1 A Well, adjacent to the staircase was a doorway that led
2 into a bathroom. The lamp cord came from underneath the
3 staircase, went through the -- the doorway threshold into
4 the bathroom. It then plugged into a power strip that was
5 draped over top of a bucket that was on the floor.
6 Resting over top of the sink in the bathroom and then
7 plugging into the wall.

8 MR. SIZEMORE: May I approach, Your Honor?

9 THE COURT: Yes.

10 BY MR. SIZEMORE:

11 Q How are you doing on exhibits? You got too many there,
12 yet? You all right?

13 A I'm keeping them in line.

14 Q Okay. All right. I've laid in front of you People's
15 Proposed Exhibit Number 7. Can you please -- actually,
16 look at 7, 8, and 9, please.

17 All right. Are you -- I'm sorry. I just wanted
18 to take a peek at them.

19 A You asked me to look at them and I'm looking.

20 Q Okay. You're still looking. I like that.

21 A I'm looking.

22 Q Are those -- did all three of those fairly and accurately
23 depict how it looked when you were in there investigating?

24 A They do.

25 MR. SIZEMORE: Move for admission of People's 7,

1 8, and 9.

2 MR. METZ: No objection.

3 THE COURT: All right. 7, 8, and 9 are
4 admitted.

5 (At 2:28 p.m., People's EX-7, EX-8, EX-9 were
6 received.)

7 BY MR. SIZEMORE:

8 Q Okay. Let's go to 7 first, please.

9 Can you tell the judge what that shows?

10 A That is the power strip that the lamp was plugged into,
11 that is draped over the sink and into the electrical
12 outlet.

13 Q Can you tell us about how far, when you -- the pan, when
14 it was originally -- where it was originally located under
15 those stairs before you moved it --

16 A Mm-hmm.

17 Q -- how far from that pan to the door of the bathroom,
18 approximately?

19 A Maybe three feet -- two or three feet.

20 Q Okay. And then the cord runs through the bathroom door
21 into the bathroom?

22 A Correct.

23 Q And then you say it's plugged into a power strip; is that
24 right?

25 A That's correct.

1 Q Does People's Number 8 show the power strip?

2 A It does.

3 Q And from the power strip, where is the power strip plugged
4 into?

5 A The power strip is plugged into the GFCI receptacle above
6 the sink.

7 Q And that's in --

8 A The bathroom.

9 Q -- Number 9; is that right, that shows that?

10 A Yes.

11 Q Now, the cord to that power strip is right in front of
12 that bathroom sink, correct?

13 A Correct.

14 Q And the cord actually runs over top of the bathroom sink
15 in that picture, right?

16 A Correct.

17 Q When it's -- to get it plugged in, correct?

18 A Correct.

19 Q Did you move that cord before you took that picture?

20 A I did not.

21 Q And I'm not -- and I'm presupposing that you took that
22 picture -- but when you originally saw that cord there, is
23 that the exact location in that picture?

24 A Yes.

25 Q Is there any reason during your investigation to believe

1 that the power to that GFCI did not work or wasn't on?

2 A I'm not an electrical engineer, but no, there was not.

3 Q No reason to think that in your experience?

4 A No reason.

5 Q Did you -- what did you do with the DVR security system
6 when you collected it?

7 A I had given it to Detective Sergeant Harpe.

8 Q Okay.

9 MR. SIZEMORE: One second, please, Your Honor.

10 THE COURT: Take your time.

11 BY MR. SIZEMORE:

12 Q Did there come a point when you actually did put into
13 writing the consent to search the house?

14 A It was the following evening, I believe, that we conducted
15 the consent to search. Mr. Neumeier came to the police
16 station and signed a copy of the consent to search
17 warrant.

18 Q So you were legally authorized to do it in your belief,
19 and also you had consent from the homeowner?

20 A Correct.

21 Q Okay.

22 MR. SIZEMORE: Nothing further, Your Honor.

23 THE COURT: Thanks.

24 Mr. Metz?

25 MR. METZ: Thank you, Judge.

1 THE COURT: Take your time.

2 MR. SIZEMORE: Your Honor, may I approach and
3 grab my exhibits?

4 THE COURT: Sure.

5 MR. SIZEMORE: Okay.

6 CROSS-EXAMINATION

7 BY MR. METZ:

8 Q Mr. Zernick, you and I met on at least one occasion
9 before, right?

10 A Yes, sir.

11 Q In reference to this case we did, as well, correct?

12 A Yes, sir.

13 Q Okay. When you first -- you said it was on November 19th,
14 2019, that you were on the scene of the fire; is that
15 correct?

16 A That's correct.

17 Q And about what time did you show up?

18 A I was in the first arriving engine so it was within ten
19 minutes of the time of dispatch.

20 Q Okay. So again, what time did you show up?

21 A I would have to refer to my report. I'm not certain.

22 Q Do you remember what time of the day it was?

23 A 5:00, around there?

24 Q And when you arrived on the scene, what were your initial
25 thoughts as to what you saw?

1 A We have a well involved garage fire.

2 Q Garage fire?

3 A Yeah. The fire was venting from the garage at that time.

4 Q Okay. And what were your thoughts when you saw the fire,
5 if any, as to how it might have been caused?

6 A At that -- I don't -- I was very much involved in the
7 operations portion of the scene at that point in time. I
8 was only concerned about suppressing the fire.

9 Q Okay. What are you trained as to be what your initial
10 thoughts should be when you see a fire?

11 A To suppress the fire.

12 Q Okay. As to how it was caused is what I'm asking you.

13 A I'm not certain that I'm understanding your question. Are
14 you asking when I first arrived on the engine?

15 Q Yes. Yeah. When you first saw the fire when you first
16 arrived.

17 A I believed that there was the potential for it to be a
18 garage fire.

19 Q Okay. And did you have any thoughts going into it as to
20 how it may have been caused?

21 A I did not.

22 Q What are you trained in terms of what your initial
23 thoughts should be as to how a fire starts?

24 A To go into it with an open mind, with no predeceived [sic]
25 notion as to how a fire should or could have started.

1 Q Okay. Just if something was natural or accidental, right?

2 A Potentially.

3 Q Okay. And when you were asked -- I didn't hear what you

4 said -- how much of the structure was on fire?

5 A At initial look at it, I would approximate maybe 25

6 percent of the -- of the basement area.

7 Q Of just the basement area?

8 A Yeah.

9 Q Okay.

10 A Including the garage.

11 Q Okay. And how much of that was flame damaged?

12 A There was a significant amount of flame damage in the

13 garage, and there was -- I don't even know how to describe

14 the flame damage in the basement. It was -- there was a

15 significant amount of heat and fire damage that took place

16 in the basement.

17 Q Okay. When Mr. Sizemore asked you about your first

18 interaction with Mr. Neumeier, I believe you indicated

19 that he appeared appropriate?

20 A He did.

21 Q And that he also appeared distraught?

22 A Yes.

23 Q Okay. And normally, in a situation like this, you said a

24 person would be distraught, and that's, in fact, how

25 Mr. Neumeier was, correct?

1 A Correct.

2 Q Okay. There was some testimony from you that it was
3 suggested to Phil -- Mr. Neumeier that he should stay
4 around --

5 A Yes.

6 Q -- the scene; is that correct?

7 A That is. It is.

8 Q Was he going to be welcome to go up to the structure and
9 go into the house himself?

10 A I advised him that at some point in time, he would be able
11 to come up to the home or we could show him what had
12 happened to his residence, but at that point in time, it
13 was not safe for him to do so.

14 Q Okay. So he couldn't do that when you first initially had
15 contact with him, right?

16 A Correct.

17 Q And how long did you tell him the investigation might
18 take, that he needs to sit outside the house and wait?

19 A I didn't advise as a time frame. I just told him that
20 once the fire was certainly out and it was safe for him
21 to -- to approach the scene, we would bring him up.

22 Q Okay. So you didn't suggest to him that it could take as
23 little as two hours or as much as nine hours?

24 A No.

25 Q Okay. And did Phil -- I'm going to say Phil as to

1 Mr. Neumeier -- did Phil leave his phone number with you
2 or Officer Flavin?

3 A Officer Flavin wasn't there at that point in time.

4 Q Okay.

5 A I don't recall as to whether he left his phone number with
6 me or not. I can tell you that I wasn't in a position to
7 receive a phone number as I was in all of my structural
8 firefighting gear at that time.

9 Q Okay. Would you dispute if I told you he left his phone
10 number with somebody in case he was needed?

11 A I would not dispute that because he was also in contact
12 with another patrol officer down at the -- at the bottom
13 of the driveway.

14 Q Okay. And you said your preliminary investigation
15 included yourself and Officer Flavin.

16 How long after you got there was Officer -- was
17 Officer Flavin the first Hamburg Township police officer
18 there?

19 A He would not have been the first Hamburg Township police
20 officer there, no. He was there for the purpose of the
21 investigation.

22 Q Okay.

23 A Other patrol officers were on scene of the incident.

24 Q So how long after you got there was Officer Flavin there?

25 A A number of hours.

1 Q Hours?

2 A Oh, yes.

3 Q Okay. So did you start investigation without him?

4 A I did not.

5 Q Okay. You waited a few hours for the fire to go out and
6 to start any investigation until he got there?

7 A That's correct.

8 Q Is that normal?

9 A Yes.

10 Q Normal in that, what, you wait for an officer to be on
11 scene with you?

12 A Normal as in Officer Flavin and I are the two trained fire
13 investigators in the Township and we conduct them -- our
14 fire investigations amongst one another.

15 Q Okay.

16 A Together.

17 Q Is it normal to have to wait a few hours for --

18 A So the reason it was a few hours is from the time in which
19 I arrived, I was on the first arriving engine, so I was
20 there through suppression, overhaul, insuring that the
21 fire was out, checking for extension. Officer Flavin was
22 requested quite early on in the incident, but then had to
23 come in from home on his off duty to get to the incident.
24 It was a number of hours from the time of dispatch until
25 we were in -- transferring over to the investigative mode.

1 Q Phil had contact with you when, about how long after you
2 had gotten there?

3 A Maybe an hour or two.

4 Q Okay. And then you said he came back on the scene without
5 being requested to do so and had contact with you again?

6 A That is correct.

7 Q And that wasn't the last time he had contact with you,
8 correct?

9 A That is correct.

10 Q Where else and when did he have contact with you?

11 A After that incident, you're asking?

12 Q Well, after November 19th, two times that you had contact
13 with him.

14 A I don't recall. Most times that I was in contact with
15 Mr. Neumeier, he was responsive to my requests for
16 contact.

17 Q Okay. So if you wanted contact with him, he was there at
18 your request?

19 A Yes.

20 Q Okay.

21 A Yes.

22 Q And did that include contact at the Hamburg Township
23 Police Department --

24 A It did.

25 Q -- for an interview? Okay.

1 And did Phil, at any time, give you or suggest
2 to you and/or in your presence to anybody else, ideas as
3 to what may have happened?

4 A Not that I recall.

5 Q Okay. There was this talk about this oil pan. Had he
6 brought that up in a conversation to you or anybody in
7 your presence?

8 A He had brought in the interview, I believe, at the police
9 department about the oil pan that was placed underneath
10 the staircase, yes.

11 Q Okay. So you had heard about that?

12 A That's correct.

13 Q From Phil himself?

14 A That's correct.

15 Q Okay. When was it that you, based on your training and
16 experience of at least 13 years, I think, believe that
17 this was not natural, this was not accidental, that this
18 was a crime? This was arson?

19 A It would have been at the point in time that we found the
20 oil pan and removed it from the bottom of the staircase.

21 Q And you said that was on a subsequent investigation, not
22 your initial day of November 19th, correct?

23 A That is correct.

24 Q Was that the next day, November 20th?

25 A I don't believe so. I believe it was a few days after.

1 I'm not 100 percent certain of the date.

2 Q Okay. I thought you had said on direct exam to
3 Mr. Sizemore that you noticed patterns, you believed it to
4 be a crime scene on November 19th of 2019; is that
5 inaccurate?

6 A There was the potential for it to be a crime scene, yes.

7 Q Okay. So you had established that there was potential for
8 it to be a crime scene based on your initial observations?

9 A That's correct.

10 Q Okay. And was that potential for it to be a crime scene
11 when Phil had left the location? When did that take --
12 when did you come to that potential conclusion?

13 A I don't recall as to whether if it was before or after
14 Mr. Neumeier had returned to the residence or not.

15 Q Okay. Because you said also on direct exam that he asked
16 for a computer tower --

17 A That's correct.

18 Q -- and you had no problem giving that to him, right?

19 A Correct.

20 Q Why did you do that?

21 A I believe at that point in time in which I was in contact
22 with Mr. Neumeier, we were not in a point in the
23 investigation that we found it to be suspicious -- at that
24 point in time.

25 Q Okay. But there was also, always the possibility --

1 A Sure.

2 Q -- because you're investigation wasn't done --

3 A Correct.

4 Q -- that you could be looking at an arson, correct?

5 A Sure.

6 Q But he asked for property inside and you still turned it
7 over to him?

8 A I did.

9 Q Okay. Why did you do that?

10 A I guess I can be too kind at times.

11 Q Okay. Even if that means screwing up an investigation on
12 a potential arson case?

13 A I live and I learn, I suppose.

14 Q Okay. Phil offered to you or people that you were working
15 with that he had security cameras; is that what I heard?

16 A That's correct.

17 Q Okay. And he turned those over without any --

18 A Willingly.

19 Q -- hesitation? Willingly, correct. Okay.

20 When the incident occurred on November 19th,
21 when was the house secured and boarded up?

22 A That evening.

23 Q Okay. And what light, if any, could get into that area
24 after it was boarded up?

25 A What light?

1 Q Yeah. Was there windows that were still --

2 A No.

3 Q No?

4 A Everything was boarded up.

5 Q Okay. So that leads to my question then, why did the
6 investigation stop on the 19th and continue on the 20th?
7 I think Mr. Sizemore suggested to you because maybe it
8 would be easier to see the next day, but it still had the
9 same darkness inside, right?

10 A The time of -- time of day had a lot to do with it, as
11 well. We had been on scene for a multitude of hours. I
12 was very much involved in the operational side of things
13 and physical exhaustion had a lot to do with -- with us
14 calling it for the evening and reconvening the following
15 morning.

16 Q Okay. So does that mean we can strike the idea that it
17 stopped on the 19th because it was getting too dark and
18 the 20th it was easier to see?

19 A I suppose, yes.

20 Q I mean, you tell me. On the 20th, was it any easier to
21 see than it was on the evening on the 19th?

22 A I mean, there's going to be some daylight that's going to
23 come into the basement from me opening the man door, the
24 temporary man door that was built in the basement, but
25 outside of that, no.

1 Q Not really. Okay.

2 You said that you went back to the house to
3 Jeremy Berard, the arson investigator and Mr. Herrick; is
4 that correct?

5 A Correct.

6 Q And that was your third visit in total; is that accurate?

7 A It is.

8 Q And roughly -- and I may have asked you this already. If
9 I did, I'm sorry. What date was that?

10 A I don't recall the date of that.

11 Q It wasn't on the 19th?

12 A It was not, and it was not the following day, either.

13 Q Okay. So at the earliest, it was the 21st or thereafter?

14 A Yes, sir.

15 Q And what -- that -- it was that date, the 21st or
16 thereafter, that you found this oil pan underneath the
17 staircase, correct?

18 A Yes.

19 Q And Mr. Neumeier, Phil, had told you and/or Officer Harpe
20 or others about this oil pan, correct?

21 A Correct.

22 Q Okay. And was it where he told you you would find it?

23 A Yes.

24 Q Okay. There was a picture shown to you up there with the
25 halogen light -- lamp, et cetera, and there was some talk

1 about this wrap and combustible material.

2 Describe how you -- because it's not -- it
3 wasn't the way it was in the picture. You're saying it
4 was removed from the light, correct?

5 A It was pulled off -- it was directly pulled off of the top
6 of the lamp and placed where it lied in the photo.

7 Q Okay. So this combustible material, was it determined
8 what it was?

9 A It was not. Not by -- not by me. It was not.

10 Q Okay. Do you have any idea what that material was?

11 A To me it appeared to be some type of rag or -- or
12 something along those lines.

13 Q Okay. And do you know where that rag came from?

14 A I do not.

15 Q Do you know where that rag was on November 18th or 19th,
16 before the fire?

17 A I have no idea.

18 Q Okay. And I guess I may have misheard the testimony, but
19 it sounded to me like -- and maybe it was because of the
20 word wrap was used, this combustible material, are you
21 saying that it was wrapped?

22 A It appeared to have been wrapped because it was
23 encompassing all sides of the halogen bulb.

24 Q Okay. As opposed to -- didn't you say you just --

25 A We removed a portion of it from the top --

1 Q Okay.

2 A -- because it had been involved in some type of thermal
3 event. So it had been compromised, so the portion on top
4 of the bulb had been flopped over, yes. But there was
5 still portions of that combustible material on all sides
6 of -- of the halogen bulb.

7 Q Okay. In terms of the exhibit that you looked at with the
8 bathroom and the wire, if you will, in the bucket,

9 A Mm-hmm.

10 Q Did you do any investigation of what kind of electrical
11 outlets there were on the exterior wall of that bathroom?

12 A I did not, no.

13 Q Do you know if there were any at all?

14 A I do not.

15 Q Okay. And the cord in question that we're talking about,
16 you did not move it at all before the pictures?

17 A That is correct.

18 Q And do you know if -- do you know where it was when the
19 fire started?

20 A It appeared as if it was lying in the position in where it
21 was found.

22 Q Okay. Any chance that any fire could have caused that
23 cord to move what position it was in?

24 A There's the -- there's the potential, but it wasn't
25 likely.

1 Q Okay. So the answer is yes. It could have been in a
2 different spot than its final resting spot where you saw
3 it?

4 A Not with it plugged into the wall, it wouldn't be.

5 Q Not with it plugged into the wall.

6 Do you know how it would have been plugged into
7 the wall?

8 A Just exactly as it was depicted in the photograph.

9 Q Okay. And there's no other way it could have been plugged
10 in anywhere else?

11 A Not that I could have seen.

12 MR. METZ: Judge, if I can have a second?

13 THE COURT: Take your time.

14 BY MR. METZ:

15 Q So Mr. Zernick, in terms of any arson inspection, are you
16 also authorized as an arson inspector, or is that why you
17 brought somebody in from outside?

18 A Arson -- am I -- am I qualified to do arson
19 investigations; is that what you're asking?

20 Q Inspections, as an inspector.

21 A I do -- I guess I'm not understanding the question. I
22 don't know what an arson inspector is.

23 Q Why was Mr. Berard brought in?

24 A Mr. Berard was brought in through the insurance company,
25 not from --

1 Q Okay.

2 A -- the Township.

3 Q So you didn't request his assistance?

4 A That's correct.

5 Q Did you rely on any of his reports?

6 A No.

7 Q So nothing he said meant anything to you?

8 A It's not that it didn't mean anything to me, but it didn't
9 persuade the results of my investigation if that's what
10 you're asking.

11 Q Okay. So when you were in the area and said you found an
12 oil pan --

13 A Mm-hmm.

14 Q -- who is the one -- and that's a yes?

15 A I was in that area, yes.

16 Q Who found that?

17 A Both myself and Mr. Berard.

18 Q Simultaneously?

19 A Correct.

20 Q Okay. You said it was on November 19th, your initial time
21 at the scene that you suspected something could be awry;
22 is that correct?

23 A Yes.

24 Q And when was it determined by yourself that this must be
25 an arson?

1 A Once I located the oil pan with the halogen bulb located
2 in the middle of it underneath the staircase in the
3 basement.

4 Q So way back in November of 2019?

5 A Yes.

6 Q Okay. Do you know why that it took over a year after that
7 for this case to come to --

8 MR. SIZEMORE: Objection. Calls for
9 speculation.

10 THE COURT: I'll sustain that.

11 BY MR. METZ:

12 Q When were your reports completed?

13 A I would have to refer to my report as to when it was
14 completed. There was items that were sent to the lab that
15 we were waiting on, but --

16 Q And when did those items come back?

17 A You would have to refer to the -- the police department.
18 They collected the evidence and -- and sent them to the
19 lab.

20 Q Do you have any independent recollection of how long ago
21 those exhibits or those -- that evidence came back?

22 A I have no idea.

23 Q Okay. And was your conclusion that this was an arson, was
24 that conclusion made prior to the lab reports coming back?

25 A It was. I -- I believe it was indicated in the last

1 sentence of my official report.

2 Q Okay. So you said Mr. Berard coming out and that he came
3 out because of Amica, correct, Amica Insurance?

4 A Yes.

5 Q And that had no bearing on your investigation or what your
6 file determination was?

7 A No.

8 Q Okay. Did Phil give you some notes on the date in
9 question or shortly thereafter, whether it be at the scene
10 or at the police department?

11 A He did.

12 Q And do you know where those notes are at?

13 A I believe they were supplied to Sergeant Harpe.

14 Q Okay. So he handed them to you, though, or Sergeant
15 Harpe?

16 A I believe so, yes.

17 Q Okay.

18 A It was a time frame of what happened -- what occurred the
19 day of the fire and -- and thereafter.

20 Q So those were given to you by Mr. Neumeier and you handed
21 them over to Sergeant Harpe?

22 A I did, yes.

23 Q Okay. During your investigation, which type of smoke
24 detectors, if any, did you see in Phil's house?

25 A They were standard battery operated smoke detectors, I

1 believe. There was a combination of standalone batteries
2 and hardware battery with battery backup detectors in the
3 residence, I believe.

4 Q So the difference between a photo electric or ionization
5 smoke alarms you can't say?

6 A I did not delve into the -- the smoke detector. I do not.
7 It's -- no. I can't say.

8 Q Do you recall when Phil went to Hamburg Township Police
9 Department at you or Sergeant Harpe's request, about how
10 long after the November 19th that was?

11 A I believe it was on the evening of the 20th.

12 Q So the very next day?

13 A Yes.

14 Q Okay. And was there any subsequent interviews at the
15 Hamburg Township Police Department?

16 A I don't believe so.

17 Q Phil never said anything to you about doing anything
18 intentional at the house, correct?

19 A That's correct.

20 Q In fact, just the opposite?

21 A Correct.

22 Q In terms of yourself or any -- how many fire -- how many
23 people from Hamburg Township Fire ended up at the scene on
24 November 19th?

25 A I would have to look at the report. It should be listed

1 in our report that was submitted.

2 Q Okay. Were there other agencies on scene, as well?

3 A Yes.

4 Q Okay. And do any of those -- your fire department or any
5 of the fire departments that you know of have body cams
6 and --

7 A Not that I'm aware of.

8 Q No? You don't wear a body cam?

9 A I don't wear a body cam from -- in investigation.

10 Q How about video on any of the fire trucks?

11 A There's video on the dash of the chief's vehicle.

12 Q Okay. Do you know if any firefighters ended up on the
13 second or third floor of Phil's house?

14 A Absolutely.

15 Q Okay. And for what reason?

16 A There was fire extension that came through the cold air
17 return from the basement in the bathroom area that
18 travelled through the wall up to the second floor and into
19 the third floor bedroom --

20 Q Okay.

21 A -- above the garage.

22 Q And do you know if while the -- was this down while the
23 fire was going on or afterwards?

24 A This would have been in the overhaul stage. So after the
25 main volume of the fire was suppressed and extinguished.

1 Q Okay. So nobody was trapped up on the second or third
2 floor?

3 A No.

4 Q Okay. Any reason then, that any fire ladder would have
5 been used on the second or third floor?

6 A A fire ladder?

7 Q Yeah. Of the homeowner?

8 A By the homeowner?

9 Q Of the homeowner, belonging to the homeowner.

10 A Not that I'm aware of.

11 Q Okay. So you were present for the interview -- the
12 following interview at the Hamburg Township Police
13 Department?

14 A With Sergeant Harpe?

15 Q Correct.

16 A Yes.

17 Q For the whole interview?

18 A Yes.

19 Q Did you see Mr. Neumeier arrive?

20 A I saw him once he came into the room.

21 Q Okay. So once he came into the room, you were in the room
22 with Sergeant Harpe, correct?

23 A Correct.

24 Q Anybody else present?

25 A No.

1 Q Okay. And was Mr. Neumeier told he was free to leave?

2 A Yes.

3 Q He stayed?

4 A Yes.

5 Q At any point during -- about how long was he there to be
6 questioned?

7 A Maybe a half hour, 40 minutes.

8 Q Okay. At any point, did he ask you where is this going?

9 A I believe he did.

10 Q Okay. Did he ever say, I'm ready to leave?

11 A I don't recall.

12 Q Okay. Do you know if the video -- if it was video
13 recorded?

14 A I believe so.

15 Q Okay. And you don't recall that he said on more than one
16 occasion what are we doing, I'm ready to go?

17 A He may have. I wasn't conducting the invest -- the
18 interview. I was just --

19 Q You were listening, right?

20 A That's correct.

21 Q Okay. After this happened on November -- after this fire
22 started, do you know whether or not anybody else went into
23 that house before you got there?

24 A Not that I'm aware of.

25 Q Okay. Mr. Neumeier, Phil, provided the video footage.

1 Did you get a chance to look at it?

2 A I did.

3 Q And did it cover the whole house?

4 A It covered the garage portion of the house, the front
5 stoop portion of the house, and I believe the driveway
6 coming up from --

7 Q Okay. So --

8 A -- the street.

9 Q -- more directly, then, let me ask you, did it not cover
10 any portion of the house?

11 A I think the -- there was a portion of the back side of the
12 house or the side facing Winans Lake Road that it did not
13 cover.

14 Q Okay.

15 MR. METZ: Judge, I'm good. Thank you.

16 THE COURT: Okay. Any redirect, Mr. Sizemore?

17 MR. SIZEMORE: Yes. Just briefly.

18 REDIRECT EXAMINATION

19 BY MR. SIZEMORE:

20 Q During the interview of Mr. Neumeier by Sergeant Harpe,
21 isn't it true that Mr. Neumeier was continually saying
22 I've got to go, I don't have much time.

23 A Yes.

24 Q He said that more than once; isn't that true?

25 A It is.

1 Q And the interview actually ended a little bit earlier than
2 Sergeant Harpe wanted it to because Mr. Neumeier said he
3 had to leave to go pick up his kid or do something with
4 his child; is that right?

5 A I believe so.

6 Q Okay.

7 MR. SIZEMORE: Nothing further.

8 THE COURT: Thank you, sir. You can step down.
9 Thank you very much.

10 THE WITNESS: Yes, sir.

11 MR. SIZEMORE: May this witness be excused, Your
12 Honor?

13 THE COURT: Yes.

14 MR. SIZEMORE: All right.

15 (At 2:58 p.m., witness excused.)

16 THE COURT: So is he grabbing your next witness?

17 MR. SIZEMORE: Yes.

18 THE COURT: Come on up, Officer. Unfortunately,
19 you're not on The Price is Right.

20 SPENCER FLAVIN: Maybe next time.

21 THE COURT: Give me your right hand. Speak up.
22 State your name, and spell your last for the record,
23 please.

24 SPENCER FLAVIN: Officer Flavin, F-l-a-v-i-n.

25 THE COURT: What's your first name?

1 THE WITNESS: Spencer.

2 THE COURT: Officer Flavin, do you swear or
3 affirm that the testimony you are about to give will be
4 the truthful?

5 THE WITNESS: I do.

6 (At 2:59 p.m., witness sworn.)

7 THE COURT: Thanks. Have a seat.

8 You've been through this before, correct? You
9 know the drill. All right.

10 Go ahead, Mr. Sizemore.

11 SPENCER FLAVIN

12 called as a witness, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SIZEMORE:

15 Q Can you spell -- state and spell your first and last
16 names, please.

17 A Spencer, S-p-e-n-c-e-r, last name Flavin, F-l-a-v-i-n.

18 Q Thank you. By whom are you employed?

19 A Hamburg Township Police Department.

20 Q And what's your job?

21 A Police officer.

22 Q How long have you been a police officer in Hamburg?

23 A A little over nine years.

24 Q And were you a police officer before Hamburg?

25 A Not paid, no.

1 Q Okay. Do you have anything to do with fire
2 investigations?

3 A I sometimes assist the fire marshal.

4 Q Okay. In what capacity?

5 A I'm there to assist him with collecting evidence,
6 interviewing people involved, things like that.

7 Q Okay. Were you called out in that capacity on November
8 19th of 2019?

9 A I was.

10 Q Did you respond to a fire on Winans Lake Road?

11 A Yes.

12 Q Any idea when you got there?

13 A I don't remember specifically what time I got there. I
14 know the sun had gone down, so I would -- I would venture
15 it was probably past 5:00.

16 Q Is it true that you were off duty that day?

17 A I was off duty. I was called in for that --

18 Q Okay.

19 A -- scene, correct.

20 Q Describe what was going on in the scene when you got
21 there.

22 A When I got there, the fire had been put out, but they were
23 still checking for any more smoke or anything like that,
24 tearing window materials to make sure everything was out.

25 Q Okay. Did you ever go inside that house on the 19th?

1 A I -- we briefly went inside --

2 Q Okay.

3 A -- to look around, yeah.

4 Q Did you get much work done on the 19th at all as far as

5 investigation?

6 A No. We did not. We went in and took a look at the scene,

7 determined kind of what we would like to look at further

8 in the future, and remained on scene until it was secure.

9 Q Did you ever speak -- on the 19th, did you ever speak with

10 Philip Neumeier?

11 A We did.

12 Q Did you personally ever -- okay.

13 Where -- was Fire Marshal Zernick present for

14 all of that?

15 A Yes. He was.

16 Q Were you present when Mr. Neumeier turned over his DVR

17 security system?

18 A Yes. I was.

19 Q And that was done consensually; is that true?

20 A That's true.

21 Q And he gave you consent to open it, look at it, search it,

22 correct?

23 A Yes. He said that there might be a password on it.

24 Q Okay.

25 A But he -- he told us where it was and said, by all means,

1 it's in this room, go get it. So we did.

2 Q Were you involved in -- who was the first person to try to
3 access that DVR, was that you or was that somebody else?

4 A It was not me.

5 Q Okay. Very good.

6 At some point, you did a walkthrough of the
7 interior of the house. Now, I know you did one -- a brief
8 one on the 19th. Did you do another walk through on the
9 20th, the next day?

10 A Yes. We did go through the house.

11 Q Okay. At some point, did you find articles of residency
12 for Philip Neumeier inside that house?

13 A I don't remember if it was on the 20th, specifically.

14 Q Okay.

15 A But yes, there were documents in the house with Philip
16 Neumeier's name on it.

17 Q And what were the nature of those documents that you
18 found, if you remember? Find anything from the IRS?

19 A I remember finding documents in the second -- well, the
20 main level of the house, the second floor if you enter
21 from the garage, that were involving taxes through the
22 State of Michigan and Mr. Neumeier.

23 Q Okay.

24 A And I believe there were some IRS, but I'm positive there
25 was State of Michigan.

1 Q Understood. Did you view the security camera footage?

2 A I viewed some of the footage, yes, at my office with

3 Sergeant Harpe.

4 Q Did you see in any of the footage Mr. Neumeier leaving the

5 house?

6 A Yes.

7 Q Did you see in the footage any smoke coming out of the

8 house?

9 A Yes.

10 Q How -- if you know, how long between the time Mr. Neumeier

11 left the house and the time that you could see smoke

12 coming out of the house?

13 A It was approximately two minutes.

14 Q Two minutes?

15 A Correct.

16 Q Were you present when -- no. You weren't, never mind.

17 Did you go upstairs in the house, and I mean

18 third -- the top floor?

19 A Top floor, yes. I did.

20 Q And were there bedrooms upstairs?

21 A Yes. There was.

22 Q Was there anything unusual about any of the bedrooms?

23 A There was a bedroom that appeared to be used for a child.

24 I remembered the bedding was incomplete. It was missing,

25 I believe, a mattress. I think the frame might have still

1 been there. The main bedroom -- the master bedroom, if
2 you will, had a walk-in closet and its own bathroom. I
3 remember the closet being very bare.

4 Q In the master bedroom?

5 A Correct.

6 Q The master closet was bare? Did you see any clothes in
7 that closet?

8 A Very few.

9 Q Did it appear that the upstairs had been cleaned out?

10 A It seemed somewhat cleaned out, yes.

11 Q Did you notice any bottles of water, and I mean gallons of
12 water?

13 A Yes. There was multiple gallon-sized containers of water
14 in a bathroom in the upstairs. The hallway bathroom I
15 guess would be the simple way to explain it.

16 MR. SIZEMORE: One second, Your Honor.

17 THE COURT: Take your time, Mr. Sizemore.

18 MR. SIZEMORE: I have nothing further.

19 THE COURT: Mr. Metz?

20 MR. METZ: Thank you. Just briefly.

21 CROSS-EXAMINATION

22 BY MR. METZ:

23 Q Officer Flavin. [Flau ven] or [Flay ven]?

24 A [Flay ven].

25 Q Flavin. So your initial contact with Mr. Neumeier was on

1 November 19th, the day --

2 A That's correct.

3 Q -- of the fire, correct?

4 A Yes.

5 Q And where did that take place at?

6 A In the driveway.

7 Q Okay. And who else was present with you when that contact
8 took place?

9 A Fire Marshal Zernick was.

10 Q Okay. And when, in comparison to when you arrived on the
11 scene, was that? Was that immediately upon your arrival
12 or later in the evening?

13 A It was not immediately upon my arrival. It was definitely
14 after that. I couldn't tell you precisely.

15 Q Do you know if it was hours later?

16 A A few hours?

17 Q Yeah.

18 A It seems to be --

19 Q Okay.

20 A -- close.

21 Q So do you know if Mr. Neumeier had left the -- this area
22 and then returned?

23 A I was told by the first officer I made contact with --

24 MR. SIZEMORE: Objection. Hearsay.

25 THE COURT: Response?

1 BY MR. METZ:

2 Q Do you know --

3 A I was told by more than one person that he was there and
4 left. So I can't tell you that he left and then was
5 there. I did not see him.

6 Q Okay. And that actually kind of parlays into the next
7 question in terms of whether you knew something or not.

8 You indicated that you believed there was no
9 mattress, just a bed frame in the kid's room upstairs?

10 A I believe so.

11 Q Okay. Would it surprise you if I told you instead of no
12 mattress and a bedframe being present, there was a
13 mattress present but no bedframe, or did you just not
14 know?

15 A I'm not certain. I remember something was missing of
16 those two components, and that's it.

17 Q Okay. And somebody can sleep on a mattress without a
18 bedframe, right?

19 A Absolutely.

20 Q So if there was a mattress present but no bedframe, it
21 really wouldn't be a big deal, would it?

22 A If that was the case, you're right. That wouldn't be a
23 big deal.

24 Q Okay.

25 A I think it's something that wouldn't stick out in my mind

1 over the other, though.

2 Q I'm sorry?

3 A I think it's only that one would stick out in my mind over
4 the other, as you said. A mattress by itself wouldn't --
5 wouldn't seem out of place.

6 THE COURT: You guys say it was a bedframe or
7 was it a crib?

8 MR. METZ: No. It was not a crib.

9 THE COURT: Okay.

10 MR. METZ: Yeah.

11 BY MR. METZ:

12 Q And the security video in question was actually not
13 questioned of Phil, like, hey, we see you have security
14 cameras. Can we get the footage? He was the one who told
15 you guys, right, I have security cameras, correct, or do
16 you not know?

17 A I don't recall specifically how that went --

18 Q Okay.

19 A -- because there were cameras on the side of the house
20 where we were speaking.

21 Q Okay.

22 A So I don't know if he brought it up and we looked and saw
23 the cameras or as you said, the opposite way. I'm not
24 sure.

25 MR. METZ: Thank you. I have nothing further.

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THE COURT: That's it?

MR. SIZEMORE: No, thank you, Your Honor.

THE COURT: You're all set, Officer. Thank you very much.

THE WITNESS: Thanks.

MR. SIZEMORE: May he be excused?

THE COURT: Yes. Yeah. If you guys are done with him, absolutely. If you gentlemen are done with him.

(At 3:09 p.m., witness excused.)

MR. SIZEMORE: Your Honor, our next witness will be Jeremy Berard.

THE COURT: Okay. Mr. Gerard, come on up, please.

MR. BERARD: All righty.

THE COURT: Just get in there kind of close to the mic and I'll swear you in.

MR. BERARD: Oh, is that the mic?

THE COURT: Yeah.

MR. BERARD: Okay.

THE COURT: Your right hand, please. State your name for the record and spell your last.

JEREMY BERARD: Jeremy Berard, B-e-r-a-r-d.

THE COURT: Do you swear or affirm testimony you are about to give will be the truthful?

JEREMY BERARD: Yes. I do.

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(At 3:10 p.m., witness sworn.)

THE COURT: Thank you. You can put your hand down, and you can have a seat. And if you'll feel more comfortable, you can feel free to take your mask off.

THE WITNESS: If everybody can hear me, I will.

THE COURT: Yeah. That's great. I get the impression you've done this before?

THE WITNESS: Yes, sir. I know the drill.

THE COURT: Okay.

THE WITNESS: Yes.

THE COURT: Go ahead.

JEREMY BERARD

called as a witness, testified as follows:

DIRECT EXAMINATION

BY MR. SIZEMORE:

Q Mr. Berard, by whom are you employed?

A Herndon & Associates, the actual current name is Herndon and Herndon.

Q Okay. And what's your job?

A I am a fire investigator as well as a structure damage investigator.

Q And what kind of business is Herman & Associates?

A Herndon & Associates --

Q Herndon.

A -- is an investigative firm that started in 1979. I

1 primarily in the structure fire investigations and vehicle
2 fire investigations.

3 Q And who are your clients typically as far as fire
4 investigation?

5 A Vast majority are insurance companies. Once a fire's
6 happened and a claim has been filed, it gets assigned to
7 us for --

8 Q And as far as you know, does Herndon & Associates, they
9 contract with these insurance companies, correct, or --

10 A I -- nothing --

11 Q -- they're hired by insurance company?

12 A We get paid by insurance companies, yes.

13 Q Do they get paid more if you find the fire to be set
14 intentionally as opposed to accidentally?

15 A No.

16 Q Do you have any allegiance to any one insurance company or
17 not?

18 A No. I do not.

19 Q How long have you been doing fire investigation?

20 A This past December was 15 years.

21 Q Okay. And I have a copy of your curriculum vitae in front
22 of me here.

23 You've provided this to me maybe about a month
24 ago; is that accurate?

25 A I would say so, yes.

1 Q And was the -- I'm going to show you what I have marked as
2 People's Proposed Exhibit Number 14. Just take a look
3 real quick and tell me if that's accurate. Have I done
4 anything to it? Is that your CV?

5 A Yes. This is my CV.

6 MR. SIZEMORE: Your Honor, move for admission of
7 People's 14.

8 MR. METZ: No objection.

9 THE COURT: Okay. 14's admitted.

10 (At 3:12 p.m., People's EX-14 was received.)

11 BY MR. SIZEMORE:

12 Q So what does one have to do as far as education for your
13 job?

14 A To get to the classification of an IAAICFI, which stands
15 for the International Association of Arson Investigators
16 Certified Fire Investigator, you're required four to five
17 years of work experience under working -- working in the
18 field full time. There's also basic trainings that you go
19 through. There are many different paths to get into it.
20 I came from a mechanical background and then trained and
21 worked under Herndon & Associates, the original founder,
22 Dan Terski, for approximately three years before then, I
23 was allowed to do a fire scene on my own. I went through
24 the Michigan State basic Fire Investigation School in
25 Tustin in 2007, and then various other training institutes

1 since that time period.

2 Q And what's your highest degree?

3 A My highest degree is an associate's degree from Oakland
4 Community College. I also hold a mechanical license and a
5 builder's license in the State of Michigan. I have been
6 involved in HVAC for about 20 years now.

7 Q Okay. And what particular certifications for fire
8 investigation do you hold?

9 A I am a member of the IAAI International. I'm also a CFI
10 classification, which is a certified fire investigator,
11 which is -- as I explained, is after four years, you then
12 test after you meet point requirements, testing in
13 education. I also am a member of NAFI, and I was recently
14 the past president of the Michigan Chapter of the
15 International Association of Arson Investigators.

16 Q How many fires have you investigated over your career?

17 A This is always a -- somewhere between 2- to 3,000.

18 Q Okay. Have you testified before?

19 A Yes. I have.

20 Q Do you have any idea of how many times, ball park?

21 A Ball park in court -- I've given numerous depositions. I
22 would say probably six times in court.

23 Q Okay. And depositions, how many more?

24 A I want to say five to six.

25 Q Okay. And have you been qualified as an expert in all of

1 those?

2 A Yes. I have.

3 Q Okay.

4 MR. SIZEMORE: Your Honor, at this time, I would
5 offer Mr. Berard as an expert in the field of arson
6 investigation.

7 THE COURT: Mr. Metz, any response?

8 MR. METZ: I have no objection.

9 THE COURT: All right. I'll qualify him as an
10 expert.

11 BY MR. SIZEMORE:

12 Q Mr. Berard, in November of 2019, were you contacted by
13 any -- well, strike that.

14 Did you come to investigate a fire on Winans
15 Lake Road in Hamburg Township in November of 2019?

16 A Yes.

17 Q And tell us how you became aware and how you got assigned
18 to do it.

19 A The insurance carrier Amica submitted a request for
20 investigation to our office and I just happened to be the
21 lucky person that was next up. So then it -- I think I
22 spoke with the adjuster, just what was going on. It was
23 information to contact the fire department, which is a
24 normal practice to find out what is going on with it. Are
25 they holding the scene? What is occurring. And at that

1 time, I made arrangements with Fire Marshal Zernick to
2 come out to the site to take a look at it to assess and
3 hopefully do the investigation at that time.

4 Q Do you remember the date that you first got to the house?

5 A I believe it was November 22nd, about 11 a.m. I had also
6 reached out the day before to Mr. Neumeier to get verbal
7 consent from him, saying, hey, I'm working for Amica. I
8 need to go take a look at the house and investigate it.
9 He gave me that. There was no issue. And so I met with
10 the fire department and members of whoever else was part
11 of that party at 11 a.m. the next morning.

12 Q Okay. Can you describe the condition of the home when you
13 first saw it?

14 A The structure had had a fire. There was contents and
15 items which I attribute in storage in the driveway. There
16 looked to have been some work to the driveway. Portions
17 of -- something had been stripped or ripped out of it like
18 some heating coil or something. The vast majority of the
19 house had suffered smoke damage on the interior. There
20 was portions of it that were boarded up when I arrived.
21 It was being held by the fire department and it was
22 secured by them, so that was locked and secured. I
23 believe the entrance door had been made on the garage door
24 opening. They had boarded that and placed a lock and hasp
25 on the plywood there.

1 Q Okay. Well, did you enter the home?

2 A Once I met with them. And yes, we did enter the home. I
3 was allowed to document and do my initial inspection and
4 investigation of the -- of the home.

5 Q Okay.

6 A That led me to damage within the lower level family room.
7 I had also been told by Fire Marshal Zernick the day
8 before when we set up that they were dealing with a fire
9 in the lower level.

10 Q Okay. So --

11 A But that did confirm that.

12 Q Okay. I'm going to show you what I've had marked as
13 People Proposed Exhibit Number 1.

14 MR. SIZEMORE: Counsel, that's just the -- Jim,
15 that's just the diagram.

16 MR. METZ: Okay.

17 BY MR. SIZEMORE:

18 Q Do you recognize what that is?

19 A Yes, I do.

20 Q And is that a diagram of the basement of the home on
21 Winans Lake Road?

22 A Yes. It also includes the garage structure, as well.

23 Q Thank you. Is that your diagram?

24 A Yes, sir. It is.

25 Q And is that -- what you're holding in your hand, does that

1 fairly and accurately depict the diagram when you made it?

2 A That is correct.

3 Q And to the best of your ability, are the distances and all

4 of the dimensions there accurate to scale?

5 A Yes.

6 MR. SIZEMORE: Your Honor, move for admission of

7 People's Proposed 1.

8 MR. METZ: No objection.

9 THE COURT: 1 will be admitted.

10 (At 3:18 p.m., People's EX-1 was received.)

11 MR. SIZEMORE: Sorry. Technology and I are not

12 friends.

13 THE COURT: Just be happy I'm not doing it.

14 THE CLERK: Do you need that?

15 MR. SIZEMORE: Oh, please. Yes. I'm sorry. I

16 thought it would just pop up there.

17 THE COURT: Got to talk to the gatekeeper.

18 There's this button called on.

19 MR. SIZEMORE: That's about as far as my

20 expertise goes.

21 BY MR. SIZEMORE:

22 Q Okay, sir. Do you see that on the TV there?

23 A Yes, sir. I do.

24 Q Okay. And can you just kind of orient the judge as to

25 where you went in and what the layout of that --

1 A Okay. At the bottom of the screen near the center, you'll
2 see an arrow midpoint.

3 Q This arrow?

4 A Yes. That is the north arrow giving the indication north.

5 Q Okay.

6 A To the left of that is the overhead garage door opening.
7 That was the area that was boarded over, correct. From
8 there, going to the top of the page is the pedestrian
9 entrance into the game room from the garage. That was on
10 the same level. The green cube is a pool table there.
11 The light brown L shaped thing -- yeah -- that is the bar.
12 The blue rectangle behind that is the aquarium, and the
13 ladder type structure to the right-hand side, across from
14 the bar -- yeah -- that is the staircase to the second
15 floor -- or to the first floor, second floor in this
16 house.

17 And then further, you can see a blue line
18 underneath the ladder -- yes -- that is the mattress that
19 was on edge underneath the staircase. That was in and
20 around the area of this green -- the pool table is the
21 area we were kind of calling the game room. That is the
22 area we were looking at of having two points of origin
23 within that structure.

24 Q We're going to talk about the two points of origin --

25 A Sure.

1 Q -- and why and what that means.

2 But for -- just for right now, for the judge,
3 can you explain where the two points of origin or the
4 potential or suspected points of origin are?

5 A Okay. From that there, if we go to the green cube, the
6 pool table once again, the first area of origin is
7 underneath the staircase next to the mattress, up in that
8 area, yes. That is one. And the second area of origin is
9 down to the lower left corner from the pool table --
10 correct -- in that area.

11 Q Okay. And I promise we'll get back to that. Right now
12 I'm going to show you what I've had marked as People's
13 Proposed 2.

14 Can you tell the judge what that is, please?

15 A That appears -- this is a photograph I received via text
16 message. It's now been printed, but this was received on
17 the 22nd in the afternoon from Mr. Neumeier.

18 Q Mr. Neumeier texted that to you?

19 A That is correct.

20 Q And what does that picture show?

21 A This is an aluminum baking pan or possible two pans
22 reported to be filled with motor oil, and that is next to
23 the mattress and plywood or wood sheeting underneath the
24 staircase.

25 MR. SIZEMORE: Ms. Tammy, did you lock me out

1 again?

2 THE CLERK: Mm-hmm.

3 BY MR. SIZEMORE:

4 Q Okay. How do you know that this is under the stairway?

5 A Mr. Neumeier told me it would be in that location.

6 Q Strike that. Let me stop you real quick.

7 He told you there was a pan of oil under the
8 stairs in the basement?

9 A When I spoke to him, it was more in front of the closet --
10 in front of the closet, not directly underneath the
11 stairs --

12 Q Okay.

13 A -- but right in that area --

14 Q Okay.

15 A -- at the stairs.

16 Q Is this pan under the stairs?

17 A When I found it, yes.

18 Q Is this pan in the same location in this picture as when
19 you found it when you excavated?

20 A I believe it's close to the same location, yes.

21 Q When you say close, how far?

22 A I could never define how far this was into it and what
23 this item was at the top of it, but close to the edge.
24 It -- it -- aside from maybe a half inch of movement, it
25 appeared to be in the same location.

1 Q So you're talking about inches, not feet?

2 A Correct.

3 Q Okay.

4 A Correct.

5 Q What's this blue thing on the right side of the picture --

6 I'm sorry, left side of the picture?

7 A That is a mattress that is standing on its side that I had

8 pointed out in the sketch.

9 Q That's the blue line in the sketch?

10 A Correct, sir.

11 Q And then on the right side, what is all of this on the

12 right?

13 A That are sheets of paneling or plywood, wood material that

14 was reported to me by Mr. Neumeier to have him moved in

15 there, and other items had been moved in prior to -- after

16 the pan had been placed.

17 Q I'm also going to show you what has been admitted already

18 as Exhibit Number 5. So this is still People's Number 2,

19 okay?

20 A Okay.

21 Q And this is People's 5 over here.

22 A Correct.

23 Q Is this -- well, we've already had it admitted. Is this

24 what it looked like under those stairs when you got there?

25 A In that picture, yes. It depicts -- there was actually

1 debris that had been placed into that area by the actual
2 fire department on their initial -- initial inspection. I
3 can't say without looking down that some of the debris
4 wasn't -- because they had piled some debris in front of
5 it. So it was a very virgin area to excavate for us.

6 Q What do you mean, untouched?

7 A Untouched, yes.

8 Q Okay. So Number 5 here shows -- looks like a burned down
9 mattress.

10 A Correct.

11 Q Is that what it is?

12 A That is correct, sir.

13 Q Okay. So we know we're talking about the same location
14 here, right?

15 A Correct.

16 Q And then did you find any remnants of any of this paneling
17 or plywood at all when you were excavating?

18 A Yes. I did.

19 Q Okay. And is that depicted in 5?

20 A Looking from this distance, I can't -- I -- there maybe
21 something on the sidewall there, but I can't say for
22 certain.

23 Q Did you -- you were investigating. Who else was present
24 while you were doing your investigation?

25 A The first day I investigated would have been Fire Marshal

1 Zernick, I believe Detective Harpe, there may have been
2 another member. Flavin was also there. We did no
3 excavation or anything. I was allowed to document, look
4 at some things, and then allowed to review -- they wanted
5 to review the video because they were working on that.

6 Q Understood.

7 A And that occurred the first day. When we actually
8 excavated that area, present was Fire Marshal Zernick,
9 myself, along with Electrical Engineer Jay Herrick, and
10 Mr. Herrick's assistant, his helper Kevin Herrick.

11 Q Okay. What -- you already identified with us two
12 different spots that you called origins and I called
13 suspected origins. Based on your opinion -- and we'll get
14 to the rationale behind it -- but can you say to this
15 judge that you believe that those are origins, not
16 suspected origins or potential origins, origins of fire.

17 A Yes. I can. They are two separate independent origins.

18 Q Let's start with the one at the southeast corner of the
19 basement, by the corner of the pool table.

20 A Okay.

21 Q Okay. What is it about that location that leads you to
22 believe or to tell this judge in your expert opinion,
23 that's an origin of a fire.

24 A The overall of that area, we have greater mass loss to
25 portions of the pool table, leg, and structure in that

1 corner that faces toward the southeast corner. We also
2 have extensive charring and mass loss to the floor joists
3 above that area with complete collapse and disintegration
4 of the drywall that would have been on that ceiling in
5 that area.

6 All my information that I collected indicated
7 that the ceiling was fine. There were no holes. There
8 were no penetrations. Drywall is a fire barrier and is
9 used in construction as a fire barrier because it doesn't
10 burn. It loses moisture and called -- called
11 calcification. That drywall was gone and there was
12 extensive charring into the flooring structure in that
13 area. That gave indication of a fire originating in that
14 area and spreading up from that area and consuming the
15 joists in the damage.

16 Q Okay. Was the charring above the location of the -- that
17 origin there, charring above it more significant or
18 substantial than other locations in the basement?

19 A Yes. It was.

20 Q Okay. And you also saw charring on the floor in that
21 location, as well?

22 A Yes. We --

23 Q Were -- go ahead.

24 A Go ahead.

25 Q No. I'm sorry.

1 A No. The flooring had been finished with an epoxy -- it
2 was a plywood that had been epoxied, and there was greater
3 delamination and consumption of the plywood in and around
4 that area giving the indication of a longer duration or
5 greater fire load -- fuel load within that area. As we
6 all know, anything can be a fuel load that is -- once it
7 reaches ignition temperature. Wood material, that's what
8 I -- you would call that a fuel load.

9 Q Okay. In that location in that corner of the basement
10 near the first -- I'll call it the first origin of the
11 fire, were there any -- was there anything in that area of
12 the basement that you saw that could have started a fire
13 accidentally?

14 A No. Now, that area had been processed by the fire
15 department on the day of the fire. Some of that debris --
16 we did go through that debris. No items were located that
17 were in that area that would have accidentally caused the
18 fire. Usually, you're looking for electrical items, other
19 components, heat sources. None of those were identified
20 in that area.

21 Q Were there any electrical outlets or light fixtures in
22 that area?

23 A There were. There was a -- parts of a light fixture above
24 that area that -- that coincides with the other origin at
25 the top part, why it's important.

1 Q Let's talk about the other origin, then.

2 That is under the stairs?

3 A Correct.

4 Q Did the lamp with the halogen bulb and the combustible
5 material wrapped around it and a pan of motor oil start
6 that fire?

7 A There's a very good possibility, yes. It is an ignition
8 source that could start that fire.

9 Q Okay. Describe what you found in that area.

10 A When we were excavating day 2, myself and Mr. Zernick were
11 looking for the pan of oil because what had occurred when
12 I was there the first day, we had identified an arc
13 sight -- a potential arc sight on the light fixture at
14 the -- what would be the east side of the pool table near
15 the end of the bar.

16 That was significant because that light fixture
17 was fed off of branch circuit wiring from the other end of
18 the pool table. So to have an arc sight at one end of the
19 pool table and not an arc sight at the other end of the
20 area above the ignition or above that area of origin at
21 the south end of the pool table, but to have an arc sight
22 there, that meant that those electrical conductors were
23 first compromised at that end, meaning fire first
24 originated in and around closer to that area, causing an
25 arc sight there.

1 Arc sight is a transfer of material. It's
2 generally within copper because it has a high melting
3 temperature and when its energized, you'll actually get
4 a -- a form where the branches, the insulation will melt
5 away and a portion of the copper will transfer from one
6 branch to the other on one wire. You'll have a divot on
7 one and a ball on the other.

8 That's what I identified the first day. It was
9 a very small arc sight. That gave question as to what was
10 going on at the stairway.

11 Also, the fire pattern to the bottom of the
12 stairway gave indication of charring. There was also the
13 mattress was completely consumed but there was a debris
14 pile there.

15 Upon the day 2, when we excavated in there, we
16 identified a cord traveling into that area from the
17 bathroom. That cord was plugged into a power strip which
18 was then plugged into a receptacle above the bathroom
19 sink. The cord we found traveling --

20 And this is as you're digging, you're going like
21 a paleontologist or archeologist and you're delayering
22 into the area where you're collecting. You want to go
23 into undisturbed stuff and when stuff collapses in a
24 building, it forms layers. So you're going in a
25 delayering factor. You don't just take a shovel or an

1 item, dig down and pull back. You delayer; you take
2 layers off. And that indicates when something collapses
3 and when it's burned, and you can get what is called a
4 protected area.

5 As we dug in there, we identified unburned
6 material above with burn material above it, indicating
7 that it had been protected and stuff collapsed early on.
8 What can take place when you have a mattress -- a mattress
9 has a high heat release rate because --

10 Q What does that mean?

11 A Heat release rate is a fire term generating how much
12 energy can come off of it. A mattress is a great way,
13 same with a couch as far as starting a fire or having a
14 fire get really big quickly because you have air and a
15 fuel mixed together and spread out. There's surface area
16 ratio to the foam, where if you just have a big cube of
17 foam that air can't get in, the outside burns but the
18 inside doesn't get going. But you spread it and stretch
19 it over a frame like a couch or a mattress, it burns very
20 good, and especially in a vertical orientation.

21 So that would be a quick fire origin or a quick
22 fire growth from that area, extending up the side of the
23 mattress and get to the ceiling quickly and build a plume
24 that then would lead to our arc sight. So --

25 Q Arc -- let me stop you. I'm sorry.

1 A Yeah.

2 Q I know you've got more to say, but I've got to slow you
3 down. The judge is making faces and I'm thinking that's
4 the faces I'm making.

5 A Oh.

6 Q Because arc sight --

7 A Correct.

8 Q -- now, you've explained what an arc sight is.

9 A Correct.

10 Q And -- but the arc, the thing that melts the copper and
11 melts insulation, that's an external stimulus, right? In
12 other words, a fire did that or some other heat source?

13 A Correct. This is arc --

14 Q It's not a short in the wire?

15 A No. This -- this -- what it is, is most modern houses,
16 your insulation is covered in a plastic vinyl coating.
17 That melts at temperatures, and then you have bare
18 electrical conductors that then transfer electricity
19 arcing, and so that is what occurred in this place. There
20 can be causal arcs. That was not the case with this one.

21 Q Okay.

22 A And that's why we had an electrical engineer come in and
23 confirm that opinion, as well.

24 Q Okay. That was my next question. You've got this place
25 in a wire where the insulation had melted away, the copper

1 wire had been compromised, and you had the ball in the
2 socket. Is that -- in and of itself, could that be a
3 cause of this fire?

4 A In that location, no.

5 Q Okay. Why not?

6 A You know, there's another part of fire investigation also
7 involves the fire dynamics. You have fire patterns; you
8 have fire dynamics. Fire dynamics involves your air, your
9 fuel mixtures, and how they come to relate and how things
10 burn, so you then have to identify a secondary fuel source
11 that then burns from that area.

12 We are -- if you are saying you have a fire
13 starting at a light fixture, generally, most light fixture
14 failures or anything that we'll see will go into the
15 joists and up in that area and burn from that area or
16 collapse down.

17 We didn't have a light -- a light material fuel
18 load in that area that could drop off and ignite in that
19 area. We didn't have a big pile of newspaper or something
20 like that. So it gave the indication that this was more
21 of a indicator, if you will, of the fire spreading and
22 coming into contact with this light fixture first before
23 the rest of the circuit that went into the second origin.

24 Q Are you able to say that there are two separate origins to
25 this fire?

1 A Yes. I am.

2 Q Are you able to say that they never connected; the two
3 fires never met?

4 A That's -- no. You can't say that because you do have a
5 ceiling plume that films -- that fills, and you do have a
6 smoke layer that fills up --

7 Q Okay.

8 A -- along the ceiling, so no. They -- they would mix at a
9 certain point.

10 Q Okay.

11 A As far as the basis, yes.

12 Q Okay. So we have two origins, two bases?

13 A Correct.

14 Q And in your experience and in your expertise, the fact
15 that you have two separate origins, does that tend to mean
16 it's an incendiary fire or an accidental fire or does it
17 not mean anything?

18 A Well, no. There -- there can be accidental causes for
19 multiple points of origin and that is the other part that
20 you have to look at and rule out. We did not have that.
21 We did not have the other extenuating circumstances that
22 would lead to one fire originating here and then migrating
23 over to here, based on projectiles, based on conduction,
24 radiation, something along those lines. We also don't
25 have the time frame that would allow for that to go. And

1 we also don't have a lamp incendiary device -- or we do
2 have a lamp incendiary device in the base of origin 1 --
3 or origin 2, excuse me, as you've listed.

4 Q And that's what we want to get back to because that's what
5 you were talking --

6 A Sure.

7 Q -- about excavating the -- that under the stairs?

8 A Correct. And what we -- what we found as we moved into
9 it, we found the cord traveling to the pipe, which then
10 was identified as a possible pedestal lamp, and as we made
11 our way into the debris, there was debris collapsed into
12 the pan, it was decided that the best course would be to
13 slide it out, sat it on the pool table to look at it.

14 And at that point when we pulled it out, we
15 could see that there was a halogen bulb -- halogen flood
16 style bulb in the fixture. The fixture appeared to be no
17 fail -- evidence of any failure, and there was remains of
18 a cloth type material wrapped around the bulb and there
19 was an odor of what I'd say is motor oil or petroleum in
20 the area. And the upper portion of the cloth had burned
21 away from the bulb and portions of the fixture, but the
22 lower half had been protected as if it was in a liquid.

23 MR. SIZEMORE: Ms. Tammy, would you mind turning
24 the TV on, please?

25 BY MR. SIZEMORE:

1 Q On the screen you're going to see People's 10. Can you --
2 I can bring you a copy of it if it would help you?

3 A That would be great because it's a little bit --

4 Q Yeah. That one -- that's a little washed out, isn't it?

5 A Okay.

6 Q Do you recognize that?

7 A Yes. I do.

8 Q And what is that?

9 A That is the pan once we moved it to the pool table. The
10 half circle that you can see in the lower center of the
11 picture, that is the halogen bulb facing towards you. It
12 is partially submerged in the material and debris. You
13 can see the gray to the right of the half circle is the
14 cloth-type material that had burned and was basically just
15 a -- lack of better term, a skeleton of itself. And it
16 was friable, very collapsible. And this indicated that
17 the lamp had been wrapped in the cloth and placed into the
18 oil.

19 Q And is this part of the lamp up here above the bulb? You
20 can see --

21 A Yes. That is the head of the fixture, or the control
22 portion of it.

23 Q Do you happen to know -- and I don't even know if this is
24 something or not --

25 MR. SIZEMORE: I'm done with the television.

1 Thank you.

2 BY MR. SIZEMORE:

3 Q Is there a wattage on that bulb?

4 A We did collect it. I believe it is 150.

5 Q This lamp that it was plugged into, is this an ordinary
6 table lamp or a desk lamp, if you could tell?

7 A No. From my -- it is a pedestal lamp.

8 Q Pedestal?

9 A This is something that is -- it stands in the corner of a
10 room or something, about five feet tall and it has a lamp
11 on it.

12 Q Understood. Was that -- was it intact? Was it five feet
13 long?

14 A The piping, yes. The base, I believe, may have melted off
15 in the course of the fire, but I believe we did find the
16 base, but it was significantly intact. There was no
17 lampshade or any cover for it that gave any indication,
18 there was no melting to it or damage to the head of it,
19 which gave us the indication that it was collapsed and
20 below this debris at the time of the fire.

21 Q Is this halogen bulb that you found screwed into this
22 pedestal lamp, is that unusual to see a halogen bulb of
23 that wattage in that kind of a lamp?

24 A My experience in doing this 15 years, it's not normal, but
25 what's normal for somebody in comparison to somebody else

1 I can't say.

2 Q What about the fact that this looks like it's a -- one of
3 those flood style bulbs instead of a smaller regular bulb?

4 A Incandescent?

5 Q Incandescent bulb?

6 A It all depends. If the lamp is capable of handling it.
7 Most lamps are not rated for 150 watts. I'm not -- I
8 would leave that up for Mr. Herrick, but I have seen
9 floods -- flood bulbs in other lamps.

10 Q Do halogen bulbs burn hotter than incandescent bulbs in
11 your experience?

12 A Yes.

13 Q Was this lamp plugged in?

14 A Yes. It was, sir.

15 Q Where?

16 A It was plugged into a power strip that was located above
17 the bath -- or in front of the bathroom sink, around the
18 corner, and then that was plugged into the receptacle
19 above the sink.

20 Q Would you consider a floor lamp with a 150 watt halogen
21 bulb, wrapped in a combustible material in a pan of motor
22 oil, plugged into a wall, an incendiary device?

23 A I would.

24 Q Is there anything about the location, the condition, or
25 the circumstances surrounding that pan that makes you

1 think that it's an accident, this fire was an accident?

2 A No.

3 Q You said that mattresses make great -- I don't remember
4 your words, but if you want to light a fire, a mattress is
5 a great thing to start to burn?

6 A Correct.

7 Q Because of the way that the material is separated by the
8 springs and the fact that it can basically act as a --
9 what'd you say, flume -- plume?

10 A It is a -- it is a very good fuel load to get going --

11 Q Gotcha.

12 A -- once it goes.

13 Q So if I'm going to burn my house down using this device,
14 would it be a good idea to stand a mattress next to it?

15 A Yes.

16 Q How about pieces of paneling or plywood on the other side
17 of it. Would that be a nice kindling?

18 A Yes. Or secondary fuel to get going once your first fuel
19 is gone through.

20 Q Can you talk to us about the concept of pressurization
21 inside of a home? Specifically, what does it take to
22 start to see smoke coming through cracks under doors or
23 around windows or door walls?

24 A Well, there's pressurization and there's air currents.

25 Q Okay.

1 A So you have a house, that -- this house we'll call it, if
2 the garage is the first floor -- has three levels. So you
3 have first, second, and third.

4 What's important to remember there is that the
5 third floor had cathedral openings to the second floor,
6 okay. So your -- your foyer off the first floor, because
7 there was steps up to it, was open.

8 So we have this volume that we have to fill to
9 bank down and push out if we're coming out an opening. So
10 we've got to have one of two things: either a very large
11 fire going quickly that's building, or a slow smoldering
12 fire that's building up and then pushing out.

13 And so when you're talking about this, we had --
14 we had two -- whatever the square footage of this house
15 is, stacked at two times on top of it, we're filling that
16 with smoke before we're pushing out a window if the
17 window's closed.

18 Q So -- and if I understand right, you have to get the
19 entire upper two floors because of the opening between
20 them?

21 A Correct.

22 Q You have to fill that, basically, to a certain pressure
23 before it will actually start to push the smoke out of the
24 house?

25 A Mitigate it out, provided there's no other factors in it.

1 But yes. You are filling quite a bit of that house before
2 we start pushing out.

3 Q In your expert opinion in a house -- we don't know the
4 square footage, but you've been in that house?

5 A Correct.

6 Q You've seen it. Based on your expertise, how long would
7 it take to get that house to a pressure where it would
8 then push out?

9 A That would depend on the -- what type of fire's going with
10 it. I mean, if we're starting with something smoldering,
11 it could take hours. If you're starting with something
12 that's roaring and going away very quickly, a matter of a
13 few minutes.

14 Q Okay. In that house, based on the fire damage that you
15 saw in the basement and everything that you witnessed as
16 you were going through there doing your investigation,
17 would it take more than two minutes for that house to fill
18 to the pressure?

19 A Yes.

20 Q Did you inspect any of the smoke alarms that were in the
21 house?

22 A Yes. I did.

23 Q And did you find them to be functional?

24 A Yes.

25 Q Were they sounding off at any time when you were there?

1 A I cannot recall if they were sound -- I mean, there may
2 have been some -- some chirping.

3 Q Okay.

4 A But that's not unheard of after a fire that they're --

5 Q Okay. Chirping, does that mean that they're functional
6 but they're --

7 A Correct.

8 Q -- don't have power isn't usually what that means?

9 A Correct. There's also a -- a portion that you can tell if
10 the smoke detector has sounded based on the striations
11 coming off the horn opening on it. And that's one of the
12 other ways, and I do believe we have some that did
13 sound -- and there was evidence. Because it takes the
14 soot and vibrates it, and it forms a pattern around the
15 opening.

16 Q Did you see that in this case?

17 A I believe, yes.

18 Q Do you conduct your investigation independent of the
19 Hamburg Township investigation?

20 A Yes. I do.

21 Q Do you cooperate with each other?

22 A You have to. Because you have the same evidence to look
23 at and you have to proceed through it in the same manner
24 of digging it because you only get one -- one chance at
25 that to delayer it and go through it. But for the rest of

1 it, I am a separate investigation from them.

2 Q So is your opinion on this fire your own, for lack of a
3 better term?

4 A Yes. It is.

5 Q All right. Thank you very much, Mr. Berard.

6 MR. SIZEMORE: Nothing further, Your Honor.

7 THE COURT: Mr. Metz?

8 MR. METZ: Thank you, Judge.

9 CROSS-EXAMINATION

10 BY MR. METZ:

11 Q Mr. Berard, Jim Metz on behalf of Mr. Neumeier.

12 A Hi, Mr. Metz.

13 Q Good afternoon. So the first time you were on scene was
14 about three days after what you knew to believe the date
15 of the fire, so November 22nd; is that what you indicated?

16 A That is correct, sir, yes.

17 Q Okay. And the reason you said you were at the scene was
18 at the request of the insurance company; is that correct?

19 A That is correct.

20 Q And nobody else?

21 A That is correct.

22 Q Okay. Before you got to the scene, had you had contact
23 with Sergeant Harpe?

24 A No.

25 Q On the phone or in person?

1 A I met Sergeant Harpe at the phone -- at the scene that --

2 Q Okay. Never talked to him on the phone before then?

3 A No.

4 Q And how about Jordan Zernick, the fire marshal?

5 A I spoke to him, I believe, the day before.

6 Q Okay. So maybe November 21st?

7 A I believe that is correct, yes.

8 Q Okay. And what did you speak to him about?

9 A Were they holding the scene, that's one of the things that

10 goes on. You -- you contact the fire department or police

11 department, hey, what's going on? Are you guys still

12 investigating? What's going on? Do you have the scene

13 locked down? Yes. We're dealing with a lower level fire.

14 We were reviewing the video. We -- we see in insured

15 leaving a short time before the fire -- or a short time

16 after the fire, excuse me.

17 Q You said the insured?

18 A Well, whoever was --

19 Q Can we just -- I didn't hear what you just said?

20 A Yes. Whoever Mr. Neumeier -- I refer to them as the

21 insured because --

22 Q Okay.

23 A -- I'm working for the insurance --

24 Q I thought that's what you said.

25 A Yes.

1 Q I'm just making sure.

2 So you said low-level fire. What does that
3 mean?

4 A Lower level.

5 Q Oh, lower level.

6 A They were dealing with a fire in the lower level.

7 Q Okay. And then when you had telephone contact with him
8 before you arrived on scene on November 22nd, was that one
9 time, two times, him being the fire marshal?

10 A Oh, I talked to him on the 21st.

11 Q So just one phone call?

12 A One -- one phone call with him, yeah.

13 Q Did he share any input or any descriptions of anything to
14 you?

15 A No. They had a lower-level fire, they were -- they had
16 done some digging to it, they were looking at it and that
17 was about it.

18 Q Any suspicions that he had that he shared with you?

19 A He said that the insured or Mr. Neumeier had left a short
20 time before the fire was discovered. It was a very quick
21 fire in that they were suppressing very quickly and you
22 could see on the video somebody coming up the -- the
23 driveway a short time after the insured had left.

24 Q So on the 21st, the phone call, he didn't say anything
25 about I suspect this may be an arson?

1 A That's always on the table. Any fire you go to, I mean,
2 whether he said those exact words, I don't think so. But
3 there was some -- it needed to be investigated.

4 Q What did you say your experience is with HVAC and how
5 long?

6 A I started in HVAC in 1998. I continue to this day, mainly
7 just for family and friends. But I carry a license and
8 insurance on myself.

9 Q Okay. And then how does that relate to your fire
10 investigations?

11 A Deals with air flow, currents within houses, movement
12 throughout a house, deals with construction practices of
13 houses, how things are put together, also extensive
14 plumbing and electrical background with it.

15 Q Now, Exhibit Number 2, you've seen I think in front of
16 you, but also up on the screen. Exhibit Number 2 was the
17 pan with oil, correct?

18 A That is correct.

19 Q And that as given to you by this guy, Phil Neumeier,
20 right?

21 A If that's Mr. Neumeier, I've never personally met him.

22 Q Yeah. Okay.

23 A I've only spoken to him on the phone.

24 Q So you can't identify him but you talked to him at some
25 point and said --

1 A Yes.

2 Q -- hey, what can you give me, whatever, and he gave you
3 that, right?

4 A Whoever was at the end of his phone number --

5 Q Right.

6 A -- texted me this picture.

7 Q Okay. And that picture, there's been this discussion of
8 the mattress, had the mattress in it, as well, right?
9 There was no -- there was -- he wasn't trying to hide
10 anything in the picture, correct?

11 MR. SIZEMORE: Same objection. Calls for
12 speculation.

13 THE COURT: (Indiscernible).

14 THE WITNESS: Well, if there's mattress there,
15 right.

16 BY MR. METZ:

17 Q It wasn't just a picture with oil in a pan. It was a
18 picture with oil in a pan and a mattress right next to it,
19 correct?

20 A Correct.

21 Q Okay. And that was given to you --

22 A Correct.

23 Q -- by whoever was at the other end of the phone?

24 A Correct.

25 Q You believed to be Mr. Neumeier?

1 A That's who he identified --

2 Q Okay.

3 A -- and he gave me two statements on the 22nd.

4 Q Do you know what -- do you have reason to know why, if any
5 reason, that there would be motor oil in the house?

6 A The reason he gave me was he was draining the generator.
7 On the outside he had put motor oil in it, realized he
8 didn't change the filter, drained it back out to the pan,
9 placed the oil into the pan, carried it into the house and
10 then took a picture so he could let his roommate know not
11 to bump it in the basement --

12 Q Okay.

13 A -- was I believe what he stated to me.

14 Q Okay. And was there, in fact, a generator at the house?

15 A There was a generator at the house.

16 Q Okay. So that was consistent with what he had said

17 A That is correct.

18 Q Okay. And then the oil pan, there's been a lot of talk
19 about under the stairs?

20 A That is correct.

21 Q It's a big area under the stairs, right? I mean, a
22 mattress on its side probably three-and-a-half to four
23 foot tall could fit partially, at least, under the stairs;
24 is that correct?

25 A That is correct.

1 Q Okay. Could you stand up under those stairs?

2 A The first upper riser, yes. But as you got farther in,
3 no.

4 Q Sure. Sure.

5 A Right.

6 Q So there's a portion of under the stairs that's a pretty
7 tall height, tall enough for you to stand under it?

8 A Within -- within reason, yes. A step or two, yes.

9 Q Okay. And then that pan of oil, where was that situated
10 in comparison to the high part of the stairs that you
11 could stand under under the stairs to the low part?

12 A If I were -- if you take the stairs and divide into
13 thirds --

14 Q Okay.

15 A -- high point, it was in the first third to middle.

16 Q So it was towards the higher part?

17 A Yes.

18 Q Okay. So -- because if it was pushed into the third part
19 underneath the smaller end of the stairs --

20 A Right.

21 Q -- really probably nobody could walk by there and trip on
22 it, right?

23 A Correct.

24 Q But where it was at, the higher part, it was more exposed
25 to people walking by, correct?

1 A No. It's got a mattress blocking it.

2 Q Okay. So there's no way somebody could go by there?

3 A I -- if you -- if somebody wants to go walk in there and
4 crawl past the mattress and that to get to it, sure. The
5 way -- when I first talked to him, I had pictured this
6 thing being out in front of the closet, literally in front
7 of this area where you could walk by, and he was worried
8 about Joey or whoever this -- tripping on it.

9 When we found it, you have a whole mattress
10 that's sticking out into the game room. Half the
11 mattress. And this thing's at the end of the mattress
12 under the stairs. So to trip on it, you would literally
13 have to walk this narrow little pathway in there to get to
14 the oil pan to trip on it.

15 Q Okay. Is that the pathway that you were able to stand
16 under?

17 A Yes.

18 Q Okay.

19 A Part of the way, yes.

20 Q And how far was that pan, if you could estimate, from the
21 garage door entrance?

22 A Within the measurements, if I may? I would put it
23 somewhere in the 20-foot range. If the entire basement's
24 40 foot, it's in the 20 foot -- probably, 16 to 20 feet,
25 somewhere in there.

1 Q Okay. And then the halogen bulb in question, I think,
2 what did you say the wattage was?

3 A I believe it is a 150 watt bulb.

4 Q Okay. Would it surprise you if it was something less like
5 80? Do you remember offhand? Did you document that in
6 your report?

7 A Oh, it's extensively documented. Yeah. We had Mr. Harpe
8 document it. I brought an exemplar, too.

9 Q Okay. There was some discussion about the basement and
10 that there was no hole on the ceiling; is that correct?

11 A Correct.

12 Q Okay. And is that -- was that important to your
13 investigation?

14 A Correct.

15 Q Why is that?

16 A Because we, as I explained before, drywall is a fire
17 barrier and when drywall is removed, you can burn better.
18 You can damage structure much greater. We've built
19 structures where the drywall wall, we start the fire
20 against there, and the unfinished walls burn down first
21 before the drywall wall goes.

22 So when you have this amount of damage at the --
23 which would be the -- okay -- east end of the pool table,
24 that damage is into the joist, we have to consume and
25 collapse the drywall there with the fire continuing that

1 then chars the joists on the underside of the floor in
2 that area. So that is a question we do ask, that why is
3 the drywall missing? What occurred?

4 I was given the indication that the drywall was
5 completely intact, and the ceiling, from Mr. Neumeier.
6 There was no drywall missing.

7 Q I'm sorry. You said you were given an indication of what?

8 A That the drywall -- the entire ceiling was intact. There
9 was no drywall missing.

10 Q Well, did you inspect it yourself, I guess, is the
11 question?

12 A Oh yes. The drywall is -- the drywall is gone. That's
13 the only way we're getting the damage up in that area.

14 Q Okay. So if there was, in fact, a hole in the ceiling
15 before this fire started, would that change the dynamics
16 of your investigation as to how this could have happened?

17 A It would change it to a point that we would get -- as far
18 as the -- I mean, we're still dealing with some other
19 areas, but if there is a hole within that area, it can
20 allow hot gasses to flow up into that area. But it is a
21 pretty large hole that has to encompass at least three to
22 four joist cavities. Because the joists run -- with the
23 pool table this way, the joists are running like this, so
24 it has to be a hole like this to allow access into each
25 joist cavity there to allow equal charring and damage into

1 that structure. So it's not a smaller hole. It is a
2 larger hole almost to the point where a whole sheet of
3 drywall has to be missing to cause that damage there.

4 Q So based on your experience as an expert -- your HVAC
5 experience -- what happens when ducted air pipes come into
6 contact with fire?

7 A There is oxidation, movement of it, and if you're talking
8 of air currents and movement to channels, that would go up
9 the piping and go other areas of the house. There was a
10 small rekindle or possible further fire extension up into
11 the hallway of the second floor, and nothing to do with
12 this area. So you can get -- it's basically the same
13 thing it effects in a house. It's a draft. It's chimney
14 of how to -- of how to -- heat of gases that travel to
15 higher levels because they are lighter than the denser
16 materials. So you can get travel up through ductwork.

17 Q So how did that relate to this case, if at all?

18 A Very little, if anything.

19 Q When air duct pipes come into contact with fire, do they
20 expand?

21 A Yes.

22 Q What investigation did you do of the HVAC system and/or
23 ducts in the area of this fire?

24 A Very limited. There were very limited ductwork within
25 that area. There was some -- the furnace room was within

1 the closet. You can see the white square in the sketch.
2 That is one of the furnaces. We examined the room and
3 everything and it had no relation to the fire or the
4 origins outside of that area. It was documented and
5 examined.

6 Q Obviously, you had not been to this house before your
7 investigation, correct?

8 A That is correct, sir.

9 Q And if there was a four-foot hole in the ceiling, would
10 that change your interpretation of whether this was arson
11 or a -- or arson or not?

12 A It would not.

13 Q Or a single origin fire versus two origins?

14 A Not in the time frame and the duration that this goes on.
15 No. I would not.

16 Q And the time frame being what, as far as you know?

17 A Well, based on the information that we gathered of when
18 Mr. Neumeier leaves the house and first suppression
19 arrives, and they're dealing a fire that they're reporting
20 to me in a decaying state, which the fuel has been
21 consumed and it's just -- it's the lower burning and it's
22 not growing, and to have that significant of damage, no.
23 It would not -- would not change my opinion.

24 Q Do you have any idea if all the doors and the windows were
25 shut when the first started?

1 A To the best of my knowledge, and without reviewing all the
2 pictures, I believe they were shut. The main garage door
3 was reported to be open, but the rest of the doors were
4 reported to be shut.

5 Q And if anything was opened, would that have affected your
6 investigation?

7 A No. It was open. The main garage door was open.

8 Q I'm talking about other -- interior doors.

9 A Oh, interior doors? If other doors were open, possibly.

10 Q Okay. You said your first time out there was November
11 22nd, so we're talking, if it happened on the 19th, a few
12 days later, correct?

13 A Correct.

14 Q At least 48 hours. So somewhere between 48 to 72 hours,
15 correct?

16 A Correct.

17 Q And you obviously were not one of the first people on the
18 scene, correct?

19 A That is correct.

20 Q And when you met up with the Hamburg Township Police
21 Department and were on scene on the 22nd, did you see that
22 any evidence had been altered in any state? Had anybody
23 had contact with it beforehand? Did they tell you what
24 they had moved, what they had contact with?

25 A They dug the southeast portion of the game room. Perhaps,

1 let me -- yeah. Southeast portion of the game room. That
2 area, they had concentrated and excavated that area prior
3 to my arrival.

4 Q Did you know who did that?

5 A Mr. Zernick and, I believe, Mr. Flavin.

6 Q And was it altered enough that you actually wrote that
7 down in your report?

8 A I mentioned it, yeah, in my -- I mean, Fire Marshal
9 Zernick had mentioned that to me.

10 Q Because it was significant to you to put in your report
11 that it had been altered before you got there?

12 A You -- it's a fact. You just -- you list it as something.
13 You then -- it's not uncommon. It's quite often we have
14 to examine debris that's been moved and you go through,
15 you examine it. I examined the debris in the driveway
16 because you're looking for ignition sources. We examined
17 the debris that had been prior moved because we examined
18 the aquarium equipment that had been along the wall.
19 Mr. Herrick examined that. We moved the debris that had
20 been moved towards the stairs and examined that. So it --
21 it's not uncommon in my -- to have that happen.

22 Q Okay. But needless to say, things were moved before you
23 came to make your opinion?

24 A That is correct. A portion of the scene had been moved.

25 Q And based on your observations, about how much of the

1 house do you believe caught on fire based on direct flame
2 damage?

3 A If you're going three floors, flame, probably one-third.

4 Q Of the 4,000 square-foot house, about one-third?

5 A I don't know the entire square footage of the house.

6 Q But you're saying one-third of the whole house?

7 A One-third of the whole house, yeah. From direct flame.

8 Now, smoke is another aspect that's going to destroy it,
9 but --

10 Q So in terms of the basement itself, are you saying pretty
11 much the whole basement?

12 A There were -- there were portions -- I believe there was
13 collapse at the other end of the game room. Other
14 portions, are you talking --

15 Q Flame damage.

16 A You have -- you have heat damage, which is the radiant
17 heat coming in. It's not an open flame that's burning,
18 but it can distort items and create damage in those areas.
19 But it's not flaming. If you're talking flaming, we'd
20 probably be within the -- what would be the south half of
21 the basement would be what I would label to be flame
22 damage. There's also flame damage within portions of the
23 upper floor hallway where there was some travel up in that
24 area.

25 Q Did you take note of what kind of smoke detectors were in

1 the house?

2 A I documented the smoke detectors, yes.

3 Q And do you recall what type they were?

4 A Pardon?

5 Q Do you recall what type they were -- what type of smoke
6 detectors?

7 A Myself and Mr. Herrick have that. We had various -- there
8 were numerous smoke detectors. There was a smoke detector
9 that was tied into the alarm system that was found in the
10 living room, and that was a different type. That was
11 documented, as well. There were various hardware ones,
12 there were battery powered ones.

13 Q So is there photoelectric smoke alarms and ionization
14 smoke alarms?

15 A I would imagine so, yes. We --

16 Q Well, I'm asking. Are those two different types?

17 A Those are two different types, yes.

18 Q Okay. And do you know which ones he had at the house?

19 A Offhand, I can't recall at this point.

20 Q Is it in your report?

21 A I did not go into the smoke alarms within my report.

22 Q And do you usually go into investigation in terms of smoke
23 alarms?

24 A Only when -- generally, no. It's usually involving in
25 cases of fatals -- fatalities or injuries in smoke

1 detectors in what's collected. There's further testing.
2 I mean, I documented that they are there. There are smoke
3 detectors there that are chirping. That was the extent I
4 was tasked with.

5 Q Did you have any contact with Mr. Neumeier's -- let's call
6 him, roommate, Stinson?

7 A No, sir.

8 Q No phone calls attempted to him? I mean, did you try?

9 A I don't -- I know I didn't speak to a human. I don't
10 believe I got his phone number.

11 Q Okay. Did --

12 A I'd have to go back over that. But I don't -- I'm not
13 certain if I do.

14 Q Did you refer earlier -- maybe I'm mistaken -- to a Joey?

15 A Joey Stinson, yeah. That was the name that was given to
16 me or that I recalled from my report.

17 Q And for what reason?

18 A Because that was part of my statement with Mr. Neumeier
19 when I talked to him on the 22nd.

20 Q So Mr. Neumeier gave you his name?

21 A Yes.

22 Q Okay. And you didn't utilize that name for any reason?

23 A I don't believe I had his contact information.

24 Q So you don't recall having any contact with Joey Stinson,
25 right?

1 A That's correct.

2 Q You don't recall even trying to reach out to him?

3 A At that point, I'm trying to recall where we were. Based
4 on Mr. Neumeier giving me that he was the last person in
5 the house and Mr. Stinson wasn't, it wasn't necessary to
6 talk to Mr. Stinson at that point. And also, the
7 insurance company was getting involved and there would be
8 other investigators that would handle it and it was no
9 follow-up with Mr. Stinson needed --

10 Q Okay.

11 A -- at that point. It would -- it'd be possible further,
12 but then once we were back on the 27th, I stopped my
13 investigation because we found the lamp and informed
14 Hamburg that they had an incendiary device and they needed
15 to continue. And that was left at SIU from Amica took
16 over at that point as far as contact with Mr. Neumeier and
17 stuff.

18 Q An incendiary device, define that for all of us.

19 A Well, the incendiary device is a device used to start a
20 fire, a remote device you can -- anywhere from Molotov
21 cocktail. You can do space heaters that are against
22 combustibles. Lamps are used. Lamps with -- I did a
23 clothing store in Hamtramck that they used this exact
24 floodlamp. Trouble lamps under clothing to start that.
25 That led to a federal case. We've also done painter lamps

1 on Northwest Detroit where a group was running around and
2 putting painter lamps with high wattage bulbs in closets
3 and starting those fires.

4 Lamps are a very good incendiary device. If you
5 put them on a timer, they're even better because you can
6 get further away from a house. Other incendiary devices
7 you can you do, you can manipulate any electrical
8 appliance, coffee makers, space heaters, stuff like that.
9 Those have been documented and done in the past.

10 Q Okay. So you said a lamp on a timer would be even better
11 used an as incendiary device, correct?

12 A Certainly, yeah.

13 Q There's no timer here, right?

14 A No timer.

15 Q No evidence of any timer anywhere that you saw in your
16 investigation?

17 A That's correct.

18 Q And when you use the word incendiary device, because you
19 mentioned space heaters and stuff, as well, you're not
20 talking about a device that can be used for catches on
21 fire accidentally. You're talking about an intentional
22 act when you say incendiary device; is that correct?

23 A That is correct.

24 Q Okay. So based on the talk about the light -- the bulb
25 earlier -- 150 watt I think you said. You said it's

1 notated in your report versus 80. One more flammable than
2 the other?

3 A Yes.

4 Q And which one is that?

5 A This bulb.

6 Q The one --

7 A The higher wattage, the watt is higher energy.

8 Q Okay.

9 A So you have greater -- we see a lot actually this time of
10 year with heating lamps and warming lamps for chicks and
11 ducks. They'll drop into the bedding and I've already
12 done six already this year, different barns that have gone
13 up because of it.

14 Q So the higher the wattage, the --

15 A Hotter the lamp gets.

16 Q -- the hotter. So 150's going to be hotter than 80?

17 A Correct.

18 Q And will it catch on fire, burn obviously quicker as well,
19 then?

20 A Correct. It will heat up an item closest to it. It isn't
21 going to -- it isn't going to ignite the oil on fire, it
22 is going to ignite the cloth that's wrapped around it on
23 fire, and that acts as a wick similar to a -- this is a
24 big pan, this is a big candle. And that's what this is.
25 The rag wrapped around the thing acts as the wick and that

1 gets ignited. As you can take a lighter right to motor
2 oil, it won't go. You have to vaporize it.

3 Q Okay. Thank you.

4 MR. METZ: I'm good, Judge.

5 THE COURT: All done?

6 Any follow-up, Mr. Sizemore?

7 MR. SIZEMORE: Just very briefly, Your Honor, if
8 I may.

9 REDIRECT EXAMINATION

10 BY MR. SIZEMORE:

11 Q The pan under the stairs?

12 A Correct.

13 Q There's been a lot of talk about the stairs, obviously,
14 are on an angle and the further you get under the stairs,
15 the lower the currents, right?

16 A Correct.

17 Q So we're trying to figure out where this pan is under
18 those stairs. You talked about it being far enough under
19 those stairs that the mattress stuck out past it so
20 there's no tripping damage -- or I'm sorry -- tripping
21 likelihood?

22 A Correct.

23 Q Okay. When you were excavating around this pan --

24 A Correct.

25 Q -- you got to that pan, were you able to stand in that

1 area or were you on your knees?

2 A I was on my knees in that area.

3 Q Okay.

4 MR. SIZEMORE: Nothing further.

5 MR. METZ: One second, Judge.

6 RE-CROSS-EXAMINATION

7 BY MR. METZ:

8 Q I guess just as a follow up to Mr. Sizemore's question.
9 Again, not having been in the house on November 19th,
10 20th, 21st, not until the 22nd, you have no idea
11 originally where this pan of oil was other than the
12 picture offered to you by Mr. Neumeier or whoever was on
13 the other end of the phone, right? You personally can't
14 say where that pan was?

15 A Prior to my --

16 Q Your arrival.

17 A No. That -- based on the protected areas and where all
18 the debris had collapsed, that pan did not move from the
19 time of the fire.

20 Q Okay.

21 A The pan and the mattress and all of that was in that
22 location at the time of the fire.

23 Q Okay. So water pressure from outside, nothing would have
24 moved that?

25 A Not to find it in that area with that amount remaining.

1 The material surrounding it, the cord intact as it wrapped
2 the door, no.

3 Q Okay.

4 MR. METZ: Thank you, Judge.

5 THE COURT: Okay. All right. Sir, you can step
6 down. Thank you very much.

7 MR. SIZEMORE: May he be excused, Your Honor?

8 THE COURT: Yes. Absolutely.

9 (At 4:13 p.m., witness excused.)

10 THE COURT: And then who else you got?

11 MR. SIZEMORE: Last witness.

12 THE COURT: Well, yeah. That's no problem. Why
13 don't we take ten minutes.

14 MR. SIZEMORE: Thank you.

15 MR. METZ: Where do you want these?

16 MR. SIZEMORE: I'll grab them.

17 THE COURT: We'll be in recess for ten minutes.
18 We'll pick up about 25 after.

19 (At 4:13 p.m., off the record.)

20 (At 4:28 p.m., on the record.)

21 THE COURT: All right. Recalling 21-1426-FY,
22 People versus Philip Neumeier, just a continuation of
23 exam. Let the record reflect we took about ten minute
24 recess just so everybody could stretch their legs.

25 Appearances, please?

1 MR. SIZEMORE: Rolland Sizemore, appearing on
2 behalf of the People.

3 MR. METZ: And Jim Metz on behalf of
4 Mr. Neumeier.

5 THE COURT: Thank you, Mr. Metz.
6 Mr. Sizemore, you wanted to call your next
7 witness?

8 MR. SIZEMORE: Yes, Your Honor. Gary Harpe.

9 THE COURT: Come on up, Officer.
10 State your name, and spell your last for the
11 record, please.

12 GARY HARPE: Gary Harpe, H-a-r-p-e.

13 THE COURT: Do you swear or affirm the testimony
14 you are about to give will be the truthful?

15 GARY HARPE: Yes.

16 (At 4:28 p.m., witness sworn.)

17 THE COURT: Thank you. Have a seat.

18 Go ahead, Mr. Sizemore.

19 GARY HARPE

20 called as a witness, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. SIZEMORE:

23 Q Sergeant Harpe, where are you employed?

24 A Hamburg Township Police Department.

25 Q I've already given it away, but you're a sergeant there?

1 A Yes, sir.

2 Q How long have you worked at Hamburg?

3 A Twenty-four years.

4 Q And how long have you been a police officer?

5 A Twenty-five years.

6 Q Okay. What -- you're a sergeant now. What's your current
7 assignment?

8 A Detective sergeant.

9 Q Okay. Are you involved in fire investigation in Hamburg?

10 A Yes. I am.

11 Q And what does that mean?

12 A When there is a fire, I am part of a small team that comes
13 in and tries to help determine cause and origin.

14 Q Did you help investigate a fire in Hamburg Township at --
15 oh, where is it -- on Winans Lake Road, 7809 Winans Lake
16 Road?

17 A Yes.

18 Q And that was in November of 2019?

19 A Yes.

20 Q Okay.

21 MR. SIZEMORE: Ms. Tammy, can I have the
22 television, please?

23 BY MR. SIZEMORE:

24 Q I'm going to show you what's up on the TV as People's
25 Exhibit Number 1. That is a layout of the basement and

1 the garage of that house. Do you recognize that?

2 A Yes.

3 Q And I've only got it up there for one purpose only. There
4 is a -- on the -- we're going to call this not the
5 basement, the next floor up from the there. There's a
6 sliding glass door on the backside of the house; is that
7 true?

8 A That's correct.

9 Q And that leads onto a deck; is that right?

10 A That is correct.

11 Q In order to get into that door, you have to climb stairs
12 to get up that deck?

13 A You have to climb stairs to get on the deck to walk
14 through that door.

15 Q Okay. And this is a basement layout, that Exhibit 1, so
16 it doesn't show that but it does show the rough outline of
17 the house; is that correct?

18 A That is correct.

19 Q Can you tell us if you see on Exhibit 1 the location of
20 the generator that's outside of the house?

21 A It's not put or placed on that sketch, but if it were, it
22 would be to -- I can't see the direction north, south.

23 Q I'll just tell you -- yeah, I know. This is an arrow --

24 A It would be below the --

25 Q -- that says north is that way.

1 A Okay. I would be below the garage, which would be to the
2 east.

3 Q So here?

4 A Yes. It would be on the outside of the home, but below
5 the garage.

6 Q Okay.

7 THE COURT: You know what, that was at a
8 front entrance garage?

9 THE WITNESS: Well, actually, technically, a
10 rear-entrance garage. The -- that to the west -- to the
11 north would be the back of the home.

12 THE COURT: Okay. Okay. Got it. Oh, so you
13 come around and go back in the back? Okay.

14 THE WITNESS: Yes.

15 BY MR. SIZEMORE:

16 Q Okay. We're going to go a little bit out of order as far
17 as real time here, okay?

18 A Okay.

19 Q So stay with me. You interviewed Mr. Neumeier; is that
20 correct?

21 A Yes.

22 Q And you asked him about this pan of oil that we've been
23 talking about?

24 A Yes. I did.

25 Q What did he tell you about the pan of oil?

1 A He could not remember how he brought it into the house.
2 He told me that he had drained the oil from the external
3 generator because he was doing an oil change and that he
4 had placed the tray in the basement and had taken a photo
5 of it so that he could send a photo to his friend or
6 roommate -- this Joey, and -- so that he was aware of it
7 and wouldn't bump into it.

8 Q Okay. Mr. -- do you see Mr. Neumeier here in court?

9 A Yes. I do.

10 Q Can you describe one thing that he's wearing or point to
11 him?

12 A He's wearing a suit --

13 MR. METZ: We'll stip to ID.

14 MR. SIZEMORE: Thank you.

15 THE COURT: Identification has been established.

16 BY MR. SIZEMORE:

17 Q So Mr. Neumeier is the person that told you that he took
18 the picture of that pan -- oil pan in the basement?

19 A Yes.

20 Q And he told you that he sent that to Mr. Berard, correct?

21 A I do believe he did also say he sent that to -- to
22 Mr. Berard, as well.

23 Q And that he showed it to you on his phone?

24 A I asked him to show it to me. I hadn't seen it.

25 Q Okay. Now, he didn't remember where he took that pan in,

1 correct?

2 A He was -- he was unsure at the time of the interview.

3 MR. SIZEMORE: Ms. Tammy, can I have that TV
4 back, please?

5 BY MR. SIZEMORE:

6 Q If the generator is on the east side of the house next to
7 the garage and you wanted to get to the basement area
8 outside of the bathroom in the basement, could you enter
9 in through the garage door here?

10 A Of course.

11 Q And then go through the entrance door here?

12 A Yes.

13 Q And then a straight line to the bathroom and the under
14 stair area here, correct?

15 A Correct.

16 Q Did you seize or accept a DVR security system from
17 Mr. Neumeier?

18 A Well, technically the fire department obtained that and
19 I -- I received it from them and viewed it.

20 Q And did you see anything on that video that showed
21 Mr. Neumeier with the pan of oil?

22 A Yes. I did.

23 Q Where?

24 A He was carrying the -- the pan of oil at the rear of the
25 home. He walked up the staircase of the deck and through

1 the sliding glass door on the second story. He then would
2 have had to walk through the home, down the stairs, and
3 then around to place that up against the staircase in the
4 basement.

5 Q Do you have any independent recollection -- and it's just
6 fine if you don't -- of what -- approximately what time
7 that video shows him going in the house?

8 A I have it in my notes. I don't have it at the top of my
9 head.

10 Q Did you continue watching that video?

11 A I did.

12 Q Did there come a time when you see Mr. Neumeier leave from
13 that same door?

14 A Yes.

15 Q Have you viewed the video today?

16 A I -- I viewed a small portion of the video today.

17 Q And that portion of the video that you viewed today, is
18 that -- did that look substantially similar to when you
19 originally viewed the video?

20 A Yes. It looked the same.

21 MR. SIZEMORE: Your Honor, at this time, I'm
22 moving for admission of People's Proposed 13.

23 MR. METZ: No objection, Judge.

24 THE COURT: Okay. 13 will be admitted.

25 (At 4:35 p.m., People's EX-13 was received.)

1 MR. SIZEMORE: Ms. Tammy, can I please have the
2 TV?
3 BY MR. SIZEMORE:
4 Q I'm going to show you now -- do you recognize this?
5 A I do.
6 Q What is this?
7 A That is the staircase and deck that leads into the sliding
8 door on the second story of the home.
9 Q And there are stairs here; is that right?
10 A That is correct.
11 Q And this -- we only see two steps on this stairway here?
12 A Yes.
13 Q Is it more substantial than two steps?
14 A Yes. It is.
15 Q Do you have an approximation -- does it have a landing,
16 for instance?
17 A I don't recall their being a landing. I would, off of
18 memory, say it was six to eight steps.
19 Q Okay. And is there a hill there, too? Because we're
20 talking about going around the garage and up to the second
21 floor --
22 A Yes.
23 Q -- right?
24 Okay. So is there an embankment there, as well?
25 A There is. The home is basically dug into a hill.

1 Q Understood. Now, you can't see it very well, I'm
2 absolutely sure, but there is a timestamp in this upper
3 right corner, okay? Can you see that from where you're
4 sitting?

5 A I cannot.

6 Q I didn't think you could.

7 MR. SIZEMORE: Counsel, can you see that?

8 MR. METZ: I cannot, either. Oh, yeah. You
9 know what? I can.

10 MR. SIZEMORE: Okay. Would you stipulate what
11 it says?

12 MR. METZ: 3:25:55, or at least --

13 MR. SIZEMORE: Thank you very much.

14 MR. METZ: -- that's what it says.

15 BY MR. SIZEMORE:

16 Q 3:25:55 p.m. We're just going to play a short portion of
17 this, okay?

18 A Okay.

19 Q Tell me if you recognize what -- okay. Well, there we go.

20 (At 4:36 p.m., video played.)

21 A That is Mr. Neumeier in red carrying the -- the tray of
22 oil and his friend, Joey, following behind him carrying
23 jugs of oil.

24 Q Two jugs of oil it looks like, correct?

25 A Correct.

1 Q Okay. And you saw Mr. Neumeier's face in that when you
2 reviewed it the first time or whenever, you know that's
3 him, correct?

4 A Yeah. It appears to be Mr. Neumeier.

5 Q Okay. And we're going to fast forward.

6 MR. SIZEMORE: I never keep my notes.

7 Counsel, can you see the timestamp on that?

8 MR. METZ: It is showing -- and I don't know --
9 I'm not going to attest that these times are accurate, but
10 on there, it says 4:35:08.

11 MR. SIZEMORE: Thank you.

12 BY MR. SIZEMORE:

13 Q So at 4:35:08, at least the timestamp on this video, what
14 do we see here?

15 A That is Mr. Neumeier, who's changed clothes, leaving the
16 home through the sliding-glass door.

17 Q Do you see him close the door?

18 A I did.

19 Q At some point, you start to see smoke --

20 A Right there.

21 Q -- coming out of the back -- coming out of that door. Do
22 you see that?

23 A I do.

24 MR. SIZEMORE: Counsel, do you have a view on
25 that timestamp?

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MR. METZ: I can see it.

MR. SIZEMORE: Would you agree that it's
4:37:18?

MR. METZ: Judge, I'm not testifying, but I will
stipulate to the fact that the timestamp on there as
Mr. Sizemore says, says 4:37:18.

THE COURT: Okay. And that's the smoke
reference, correct, Mr. Sizemore?

MR. SIZEMORE: Yes, Your Honor. Thank you.

THE COURT: All right. And the leave reference,
was it 4:35:08, so I got it right?

MR. SIZEMORE: 4:35:09.

THE COURT: 09. That's when somebody walked out
of the house, correct?

MR. SIZEMORE: Yes, Your Honor.

BY MR. SIZEMORE:

Q One more time. And there's still smoke coming up, right?

A Correct.

Q Can you see that?

A Yes.

Q I need to work on this for future reference.

Now, we're at 4:59:25. And at 5:00:08, you see
the firefighter coming; is that right?

A That's correct.

Q Now, have you seen this portion of this video before?

1 A I have.

2 Q And do you remember what happens when he opens that door?

3 A A large plume of smoke comes out.

4 Q And from there, the suppression begins, correct?

5 A Actually, I think, technically, the suppression was
6 beginning just a little bit prior to this from a -- but
7 you can't be seen from this angle.

8 Q Gotcha. Thank you.

9 MR. SIZEMORE: All right, Ms. Tammy. I am done
10 with that television.

11 BY MR. SIZEMORE:

12 Q As part of your investigation, do you contact the
13 Livingston County -- I'm sorry, strike that.

14 Did you contact Amica Mutual Insurance Company?

15 A Yes, I did.

16 Q And you sent them a form that you used, the BFS-52,
17 correct?

18 A It's -- I don't recall if its BFS-52 or 64. It's a form
19 that you provide them that requires them to provide all of
20 their information to me.

21 Q And did they respond to that?

22 A Yes. They did.

23 Q And as part of their response to that, did you receive a
24 declaration sheet for Mr. Neumeier at 7809 Winans Lake
25 Road?

1 A Yes, I did.

2 Q And was that a document that they provided to you in
3 response to your request on whatever that number of form
4 that you sent?

5 A Yes. It was.

6 Q I'm going to show you what I've had marked as People's
7 Proposed Exhibit Number 23.

8 Is that what you -- was that -- did you receive
9 that from Amica Insurance Company?

10 A Yes, I did.

11 Q Does that look substantially similar to the document when
12 you received it?

13 A Yes.

14 MR. SIZEMORE: Your Honor, move for admission of
15 People's Proposed 23.

16 MR. METZ: No objection, Judge.

17 THE COURT: 23 will be admitted.

18 (At 4:41 p.m., People's EX-23 was received.)

19 BY MR. SIZEMORE:

20 Q What does it say the home is insured for?

21 A The dwelling is for \$686,000. Other structures are
22 \$68,600. Personal property within the home is \$514,500.

23 Q Personal property was 514,000?

24 A Yes, sir. And loss of use is an additional \$205,800,
25 along with personal liability for 100,000.

1 Q I'm not very good at math, but we're well over a million
2 dollars at this point; is that right?

3 A Yeah. 1.2, \$1.3 million.

4 MR. SIZEMORE: Jim, this is the new thing that I
5 sent you today.

6 MR. METZ: Okay.

7 BY MR. SIZEMORE:

8 Q I'll show you what I've had marked as People's Proposed
9 Exhibit Number 24. Do you recognize that?

10 A Yes. I do.

11 Q What is that?

12 A This is a property summary for --

13 THE CLERK: I can't hear. I can't hear.

14 THE COURT: Go ahead, Officer.

15 THE WITNESS: This is a property summary for
16 property address 7809 Winans Lake Road.

17 BY MR. SIZEMORE:

18 Q And is that something that was obtained online?

19 A Yes. It was.

20 Q From Livingston County?

21 A Yes. It was.

22 Q And does that look substantially similar to the first time
23 you saw it?

24 A Yes.

25 MR. SIZEMORE: Your Honor, move for admission of

1 People's Proposed 24.

2 MR. METZ: If I can have a second, Judge.

3 THE COURT: Go ahead.

4 MR. METZ: Judge, I guess the only question I
5 would have is what it's being offered for.

6 THE COURT: Response, Mr. Sizemore?

7 MR. SIZEMORE: Yes. We're showing to offer the
8 value of the home as opined by the government.

9 MR. METZ: For purposes of the exam, I won't
10 object.

11 THE COURT: Okay.

12 MR. METZ: I can ask him questions.

13 THE COURT: Yeah. I think it's a business
14 record anyway, or a public document as recognized.

15 Exhibit 24's admitted.

16 (At 4:44 p.m., People's EX-24 was received.)

17 BY MR. SIZEMORE:

18 Q What's the -- there are three years of property values on
19 that document; is that right?

20 A That's correct.

21 Q What is the first year?

22 A The 2019 year is \$152,190.

23 Q And that's what the state equalized value, SEV is?

24 A State equalized value, yes.

25 Q And typically you would double that to find out whatever

1 the government says your house is worth, correct?

2 A Correct.

3 Q And so it's about \$300,000; is that right?

4 A About 300,000.

5 Q Contrast that with the \$600,000 -- 686,000 that he had the
6 dwelling insured for?

7 A Correct.

8 Q Obviously, SEV doesn't include any property within the
9 home. As a result -- I'm sorry -- as part of your
10 investigation, did you also either visit or contact -- I
11 think you visited -- the register of deeds in Livingston
12 County?

13 A I did. I went to the registrar of deeds.

14 Q And did you obtain their file --

15 A Yes. I did.

16 Q -- for 7809 Winans Lake Road?

17 A For 7809 Winans Lake Road, and any properties associated
18 with Mr. Neumeier.

19 Q Okay. And did you receive a handful of documents?

20 A Yes. I did.

21 Q I'm going to show you what's been marked as People's
22 Proposed Exhibits 15, 16, 17, 18, 19, 20, 21, and 22.
23 Just take a look and tell me if those look how they looked
24 when you received them.

25 A Yes. They look -- these look as -- to be the same

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documents.

Q And just in general terms so that the judge can note what they are without talking about their content, Exhibit 15 is a mortgage; is that correct?

A Correct.

Q 16 would be a state tax lien?

A Correct.

Q The date on the 6 -- on 16, could you tell the judge the date?

A This was recorded on March 28th, 2018.

Q How about 17. That's a federal tax lien?

A Correct.

Q Recorded on?

A Recorded on April 23rd, 2018.

Q Number 18 is a Brighton Valley Condo Association lien?

A Correct.

Q What's the recorded date on that?

A That is October 9th, 2018.

Q And Number 19 is also a Brighton Valley Condo Association lien, although a different unit number; is that right?

A Correct.

Q And what's the recorded date?

A That is also October 9th, 2018.

Q Number 20 is Golden Triangle Condo Association lien?

A Correct.

1 Q Recorded date?

2 A That is October 30th, 2018.

3 Q 21, the federal tax lien?

4 A Correct.

5 Q What's the recorded date?

6 A Recorded on March 28th, 2019.

7 Q And then 22 is a state tax lien?

8 A Correct.

9 Q Recorded date?

10 A That is December 20th, 2019.

11 MR. SIZEMORE: Your Honor, I would offer for
12 admission People's Proposed 15 through 22.

13 THE COURT: Mr. Metz?

14 MR. METZ: For purposes of the exam, no
15 objection.

16 THE COURT: All right. 15 through 22 are
17 admitted.

18 (At 4:48 p.m., People's EX-15 through EX-22 were
19 received.)

20 MR. SIZEMORE: Thank you, Your Honor.

21 BY MR. SIZEMORE:

22 Q Okay. Let's go to Exhibit 16.

23 Can you tell us the amount of that state tax
24 lien?

25 A 16 is \$20,457.90.

1 Q I should have started at 15, I'm sorry. That's a
2 mortgage.

3 What's the amount of the mortgage?

4 A Amount of the mortgage is \$176,000.

5 Q The federal lien in Number 17, how much is that?

6 A Number 17 is \$142,103.87.

7 Q The condo lien, Exhibit 18?

8 A The condo lien is \$700.

9 Q Number 19 is a condo lien. What's the amount?

10 A \$445.01.

11 Q 20 is a condo lien. How much is that?

12 A \$984.22.

13 Q There's a federal tax lien in Number 21. How much is
14 that?

15 A \$26,546.89.

16 Q And then finally, 22 is a state tax lien. How much is
17 that for?

18 A \$27,062.22.

19 Q That's somewhere up north of \$200,000 just in liens,
20 correct?

21 A Correct.

22 Q Did Mister -- when you -- you interviewed Mr. Neumeier?

23 A Yes.

24 Q He indicated to you that he owned another building, right?

25 A Correct. He had recently purchased a building in

1 Brighton.

2 Q And did he indicate to you what he was doing with that
3 building?

4 A He was talking about creating some -- some type of
5 business in it, but I think he was still planning that
6 out.

7 Q And what about furniture, was it furnished?

8 A He said that he had, I believe, a couch in there. Other
9 than that, I'm unaware of there being anything else.

10 Q Do you know if he had any debt on that building?

11 A I don't know.

12 Q Okay. Do you know if he had any additional debt other
13 that those liens?

14 A I don't know.

15 Q Let's talk about the oil pan.

16 He told you in your interview that he took the
17 oil pan in, correct?

18 A Correct.

19 Q And he told you that he took a picture of it so that
20 Stinson -- I forget his first name -- wouldn't trip over
21 it, right?

22 A Correct.

23 Q You confronted him at one point, and said but the pan was
24 under the stairs?

25 A Yes.

1 Q What did he say to you?

2 A I don't remember the exact language that was used, but you
3 know, basically he just said that he wanted to -- to send
4 a picture to Joey so that if Joey came home, he wouldn't
5 bump into it and spill it. But that didn't make a lot of
6 sense because just prior to that, he'd actually driven
7 Joey and dropped him off in Brighton, so he would know
8 that Joey's not going to be there anyway.

9 Q What did he tell you about where he put the pan?

10 A He said he had placed it not directly underneath the
11 stairs. In fact, he had told me he placed it by the
12 bathroom door.

13 Q And then he showed you a picture?

14 A He showed me a picture when I had asked.

15 Q And is that pan in that picture anywhere near the bathroom
16 door?

17 A No. It's pushed up against the stairwell.

18 MR. SIZEMORE: Nothing further.

19 THE COURT: Mr. Metz?

20 MR. METZ: Thank you, Judge.

21 CROSS-EXAMINATION

22 BY MR. METZ:

23 Q When you say that you went in with -- well, strike that.

24 When's the first time you went to the location
25 of the fire?

1 A That would have been the day after.

2 Q Okay. So you did not go out on the 19th?

3 A That was the first day, no.

4 Q Okay. And when you say you went out with a team -- I
5 think you said you went out with a team; is that correct?

6 A There was Fire Marshal Zernick, and Spencer Flavin, and I
7 believe -- I don't recall, but I believe Jeremy was there,
8 but I can't say definitively.

9 Q Okay. And what was the reason that you went out with them
10 as opposed to by yourself?

11 A So we -- we all get together and take a look at all the
12 fires to try and determine cause and origin, what's the
13 reason for the fire.

14 Q Okay. And what's your experience? And I might have
15 missed it. I'm sorry, but what's your experience with
16 fire investigation?

17 A I had some training and some experience with arson
18 investigation and fire investigation. I'm -- I'm an
19 expert by no means, though.

20 Q Okay. And when you say, some experience, what's your
21 training limited to?

22 A I've had a couple of arson investigation classes, fire
23 investigation classes. I'm also a trained evidence tech,
24 and that's a portion of the evidence tech training. And
25 then every fire that comes in, I seem to get involved.

1 Q Involved, but it doesn't -- does part of your training
2 involve -- I think we heard testimony earlier today, the
3 training in -- I think it's Tustin -- the training that I
4 went to that's one week long?

5 A I did not go to that, no.

6 Q You didn't do that, the Monday through Friday training?

7 A Not that specific training, no.

8 Q Okay. The garage -- the picture that was up there
9 earlier, so you had a north arrow, the garage being on the
10 east side, right?

11 A Yes.

12 Q And on the east side of the garage, you testified there
13 was, in fact, a generator, consistent with what
14 Mr. Neumeier said, right?

15 A Yes. On the exterior of the home.

16 Q And there's a side door to that garage, as well, right, by
17 the generator?

18 A There is a side door, but if i recall correctly, that
19 leads to the second floor, which is some type of a room or
20 bedroom there.

21 Q Okay. And what was your observations of the contents of
22 the garage in question?

23 A The contents, you could walk to the -- I guess you would
24 call it a man door, but the garage was filled with, it
25 looked like -- it looked like metal structures for walls.

1 I think if I remember correctly, there were the -- the
2 walls of a tanning salon that had been taken down and
3 stored there. But they were -- there were metal
4 structures within the garage.

5 Q Okay. It's pretty full and occupied?

6 A Pretty full, yeah.

7 Q Okay. So let me ask you, hypothetically speaking -- well,
8 not even hypothetically speaking, if you couldn't -- well,
9 let me ask it a different way.

10 That garage -- the door that we're talking about
11 on the east side, did you open it to see if you can go in
12 or out of it?

13 A When you were saying the -- the garage door on the east
14 side --

15 Q By the generator.

16 A -- the one on the exterior of the home or the one in the
17 interior of the garage?

18 Q Exterior outside.

19 A Exterior outside.

20 Q Outside the door --

21 A We -- I was in that room and I do believe -- no. I don't
22 believe that door opened. I don't believe we opened it,
23 but I was in that room and saw the door.

24 Q So if you were leaving the generator and walking back
25 inside to the basement, how would you do it if the garage

1 was shut?

2 A I would have just walked through the garage. I would have
3 just walked through the garage door, just opened the
4 garage door and walked in.

5 Q I said if the garage was shut.

6 A Oh, if the garage was shut?

7 Q And you couldn't do --

8 A Well, you could walk in through the east side entrance, or
9 you can walk around to the -- the back entrance.

10 Q The back entrance being which --

11 A The sliding glass door.

12 Q Is that -- are we talking about the same sliding glass
13 door we saw in the video?

14 A Yes. So if you didn't walk through the garage, there is
15 another door that leads into the bedroom on the east side.
16 Otherwise, you would have to walk all the way around, walk
17 up the stairs and onto the deck, through the sliding glass
18 door.

19 Q So you're not talking about the sliding glass door that
20 was in the --

21 A I am talking about that door.

22 Q Okay. So then seeing him enter through the sliding glass
23 door in the back, is that alarming to you?

24 A It's unusual.

25 Q And if so, why?

1 A Yeah. It's unusual. It would be unusual to carry a pan
2 of oil through your house. I wouldn't enter through the
3 second story, walk through the house, down the stairwell,
4 and then through the basement and then slide it up against
5 this -- the stairwell.

6 Q Well, like, what I just --

7 A If I had a tray of oil, I just would have left it outside.

8 Q I just asked you how you would have gone in, and that's
9 one of the ways you said you would have gone in, right?

10 A I would not have gone in that way, no. I -- that's not
11 what I would have done.

12 Q And from the outside, now that you've been to the house on
13 multiple occasions, right?

14 A Yes.

15 Q What is the closest door to the basement?

16 A The closest door to the basement would be through the
17 large overhead garage door, and then the man door.

18 Q Not the second floor sliding-glass door?

19 A No. Not the second, no. That would not be the closest
20 doorway.

21 Q There's been some testimony about this pan of oil,
22 obviously, and a lamp, right?

23 A Yes.

24 Q And would you agree with me that if the lamp had fallen
25 into that pan of oil, we'd be talking about something

1 different here?

2 A No. Not necessarily. It doesn't change the parameters of
3 the fire. So the actual two points of origin, that
4 wouldn't necessarily change that.

5 Q So you're saying the lamp being in the pan of oil or
6 falling accidentally into the pan of oil would not make
7 any difference at all in this investigation?

8 A Well, I guess it depends on the context. So if you were
9 to say if that -- if the -- the pan wasn't placed
10 underneath the stairwell, and that wasn't burned, then of
11 course that would be a factor. But it was.

12 Q Do you know when Mr. Neumeier bought his house?

13 A I do not, not off the top of my head.

14 Q You don't remember in these exhibits you just talked about
15 and the mortgage and everything you just saw, you didn't
16 take note of that?

17 A No. I didn't look for the specific purchase date, no.

18 Q Okay. Do you know if he -- if I tell you he bought it in
19 2016, do you have any idea what he did from the time he
20 bought it in 2016 when this mortgage was executed to
21 November 2019, what kind of things that he did to upgrade
22 the house and what the house was worth?

23 A Do I know what he did to upgrade the home?

24 Q Yeah.

25 A Is that your question, sir?

1 Q Yeah.

2 A No.

3 Q You don't know -- you don't know what it looked like in
4 2016?

5 A No. I just know it at the time of the fire.

6 Q Right. Okay. So you don't know what upgrades he made to
7 the house, what value he had put into the house himself,
8 correct?

9 A Correct.

10 Q Okay. You worked with Berard during this investigation,
11 correct?

12 A Correct.

13 Q And he had been hired by Amica or however you say it,
14 correct?

15 A Yes.

16 Q Okay. And what input did he give you regarding this?
17 Because he had a lot more experience than you did --

18 A Absolutely.

19 Q -- and do, right?

20 A Yes.

21 Q So how much of his word did you take and move forward
22 with?

23 A Well, I -- if he's an expert in the field, of course I'm
24 going to take some -- some information from him. I'll
25 take information from anybody that can provide it -- any

1 viable information. At the point that the incendiary
2 device was found, he had to step away. That's when I
3 contacted Agent Mike Stassy (ph) from the ATF. I called
4 him in to continue to assist us from that point further.

5 Q And when was that done?

6 A At the very day of the -- when the incendiary device was
7 found within the considered incendiary pile.

8 Q So we're talking about November 2019, maybe November 22nd,
9 2019?

10 A I -- yeah. I don't know the specific date. I'd have to
11 look to the report to -- I don't recall the specific date.

12 Q And when did the aid of that agent end with you?

13 A At the end of the investigation.

14 Q And when was the end of your investigation?

15 A Technically, I think the last piece of information I
16 obtained probably would have been -- would have been these
17 tax record, lien records.

18 Q Okay.

19 A That was the last piece of information I obtained.

20 Q And not what was the last piece, but when did your
21 investigation end?

22 A My investigation would have ended when I obtained this.

23 Q And when --

24 A There's been no further additional investigation since
25 then.

1 Q And when did you obtain those, is what I'm asking you.

2 A Well, I don't know if it's listed in the report, there's a
3 print on date here.

4 Q Let me put it this way. It looks like the warrant on this
5 case was authorized on July 28th, 2021. When did you get
6 it and submit to the Prosecutor's Office?

7 MR. SIZEMORE: Objection. Relevance.

8 THE COURT: Yeah. I'm going to sustain.

9 BY MR. METZ:

10 Q When did your investigation end?

11 A Well --

12 Q You said what it ended with, but that's not what I'm
13 asking you.

14 A Yeah.

15 Q I'm asking you when it ended.

16 A Well, I just told you, sir. When -- my investigation
17 ended and I did no additional work on it after this. This
18 was the last piece of information I obtained.

19 Q Which was when?

20 A Well, I'll have to look and see when these were printed,
21 but --

22 Q Was it in 2019, early '20? When did that investigation
23 end?

24 A No. It would have been '21. I think these were obtained
25 in '20, if I remember correctly. So technically, I think

1 it would have been '20.

2 Q Now, did you do anything to investigate these exhibits?

3 A I don't understand the question.

4 Q Did you just obtain the exhibits, put them together with
5 your report, and submit them to the Prosecutor's Office?

6 A Yes.

7 Q Okay. Did you do anything to verify the exhibits is what
8 I'm asking?

9 A Well, they're the registrar of deeds. They're the keeper
10 of records, so I don't know who else I would check with.
11 They're --

12 Q Okay. So for --

13 A -- the most accurate.

14 Q So for instance, Exhibit Number 18 was the Brighton Valley
15 Condo Association lien.

16 A Correct.

17 Q It says 9/19/18, but I think you said something about
18 October of 2018 --

19 A Okay.

20 Q This fire occurred in July of '19, right?

21 A Mm-hmm.

22 Q Would it surprise you if there was no lien at the time of
23 the fire because all those dues were paid off in January
24 of 2019?

25 A It would surprise me because I would expect that they

1 would send something to remove the lien from his record.

2 Q Okay. And then in addition, the unit 26 lien, would it
3 surprise you if I told you that was paid off ten months
4 before the fire?

5 A It could -- it's certainly possible, but I would, again,
6 would expect that they would send something to remove the
7 lien from his record.

8 Q Does the fact that -- and you testified to this -- that
9 the fact that there's only a mortgage on this property in
10 the amount of, I want to say 176- -- 176-. July 1st,
11 \$176,000. You have no idea what was put down in addition
12 to the mortgage, do you?

13 A I have no idea.

14 Q And obviously, these records played a big part. You
15 thought they were important to obtain, right?

16 A It played a part.

17 Q Okay. And again, not knowing what upgrades were put into
18 the house, you have no idea what the value of the house
19 is, correct?

20 A I would not be able to determine the value of the house,
21 no.

22 Q Okay. And simply because somebody has a mortgage at 176-
23 doesn't mean that the house is worth 176-, correct?

24 A Correct.

25 Q In fact, hypothetically speaking, if somebody were to buy

1 a house, let's say in downtown Holland on Grand River for
2 \$150,000, but it's insured for \$500,000, and their house
3 burned down, it doesn't necessarily mean it was arson,
4 right?

5 A That is not the sole determining factor in that, no.

6 Q All right. Okay. And with your communications with the
7 insurance company, did they tell you how much it was going
8 to cost to repair the house?

9 A No. I never asked.

10 Q They didn't tell you \$400,000 or more in repairs?

11 A No. They did not.

12 Q Did you see any documents that said that?

13 A I don't recall seeing that, no.

14 Q Okay. Are you aware of when the insurance company started
15 their investigation?

16 A No. I can't say definitively, I don't know.

17 Q Didn't you say you asked them for all their documents?

18 A I filled out a form that requires them to provide me all
19 of their documentation.

20 Q And did you obtain those documents?

21 A I did.

22 Q You didn't review them?

23 A Of course.

24 Q Okay. So are you aware of any payments that the insurance
25 company actually made out after the fire to Mr. Neumeier?

1 A I -- I'm unaware. I don't know.

2 Q Okay. Would it surprise you if I told you they made,
3 like, \$50,000 or 5, 6 --

4 MR. SIZEMORE: Objection. Assumes facts not in
5 evidence.

6 THE COURT: Sustained. I mean, also, it's
7 relevant at this point.

8 BY MR. METZ:

9 Q When was it that you personally, who -- well, let me ask a
10 different way.

11 You couldn't have done this on your own, not
12 being a fire investigation expert, correct?

13 A No. I would not have the experience to do it on my own,
14 no.

15 Q Who did you rely on the most?

16 A Well, again.

17 MR. SIZEMORE: Object to relevance.

18 THE COURT: Response?

19 MR. METZ: I think it's very relevant.

20 THE COURT: Yeah. I mean, I'll allow the
21 answer.

22 THE WITNESS: Again, it was team format. Fire
23 Marshal Zernick with his training and experience, Jeremy
24 Berard, Spencer Flavin, Agent Mike Stassy. Really, it was
25 a team concept.

1 MR. METZ: Okay.

2 THE WITNESS: Even though the investigations
3 were independent from the insurance company, I'd be
4 foolish not to rely on people that are experts in the
5 field.

6 BY MR. METZ:

7 Q Okay. You wouldn't have made that determination by
8 yourself, right?

9 A I would -- I could not.

10 Q Yeah.

11 A I cannot make that determination on my own.

12 MR. METZ: I'm good, Judge. Thanks.

13 THE COURT: All right. Thanks.

14 Any redirect?

15 MR. SIZEMORE: No, thank you.

16 THE COURT: You know what? I got -- actually,
17 I've got a couple questions, Officer.

18 So there's the garage, there's the side entrance
19 door in the garage, correct, and then there's one overhead
20 door or two overhead doors?

21 THE WITNESS: There's one overhead door.

22 THE COURT: So it's just a two-car garage with
23 an 18-foot door or whatever --

24 THE WITNESS: Yes.

25 THE COURT: -- correct? All right. And then

1 you walked into the garage. And then in that garage, was
2 it so full of stuff that if you opened the garage door, so
3 to speak, the overhead door, was there not a place to put
4 a tray of oil?

5 THE WITNESS: No. There's plenty of room to put
6 it.

7 THE COURT: There was plenty of room in that?

8 THE WITNESS: Yeah.

9 THE COURT: All right. And then two people went
10 in through the back door when we were watching the video
11 tape Exhibit Number 13. One of them was the Defendant.
12 Who was that other individual, if you know?

13 THE WITNESS: That is his friend, part-time
14 roommate, Joey Stinson.

15 THE COURT: All right. That was, in fact, Joey
16 Stinson, the person who the testimony was -- or the
17 allegation was that that picture was taken for Joey,
18 correct?

19 THE WITNESS: Correct.

20 THE COURT: Okay. All right. I just want to
21 throw that up. Thanks.

22 MR. SIZEMORE: Refollow up to that if you don't
23 mind?

24 THE COURT: Yeah. Go ahead.

25 BY MR. METZ:

1 Q To get into the garage to then get into that basement door
2 within the garage, you guys had to pull some stuff away
3 from the garage door and from within the garage, didn't
4 you?

5 A No. No. I didn't pull anything away from the door.
6 You're able to -- there's a small area we can walk through
7 and get in through the man door that leads into the actual
8 basement. There's a path that leads through there.

9 Q So you or nobody else had to move stuff to gain access?

10 A Well, I -- I can't say definitively that it was moved
11 prior to, but I can say --

12 Q Yeah. Because you weren't there on --

13 A -- that when I was there nothing was moved.

14 Q Because you weren't there on the initial day, it was a
15 couple days --

16 A I wasn't there the night of the fire, no.

17 Q Okay.

18 MR. METZ: All right. Thanks, Judge.

19 THE COURT: All right. Thanks.

20 You can step down, Officer. Thank you very
21 much -- or Sergeant, I apologize. You can step down.
22 Thank you.

23 (At 5:09 p.m., witness excused.)

24 MR. SIZEMORE: Nothing further.

25 THE COURT: You're not presenting anything are

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you?

MR. METZ: Not today. Thank you.

THE COURT: Okay. All right.

Mr. Sizemore?

MR. SIZEMORE: Straight forward case, Your Honor. Move to bind over as charged, second degree arson and preparation to burn a dwelling.

THE COURT: All right.

Mr. Metz.

MR. METZ: Well, I would disagree with the straightforward case, but we're not making our case today and I'll leave it to your discretion, Judge.

THE COURT: Okay. Based on what I heard, I think there's more than probable cause. I believe the crime has been committed, and I believe probable cause -- I believe the Defendant committed it. Listening to the testimony and starting out with the fire marshal, he indicated that he went down the steps, saw where the oil had been, saw what he considered two points of origin. As to the fire starting, that seemed to be inconsistent with -- I guess for lack of a better term, a natural fire. He said the fires didn't meet. They met at some point. They converged maybe on the ceiling but they certainly didn't meet on the floor. Again, two points of origin, that was again backed up by Mr. Berard's testimony

1 who definitely -- the Court was intrigued by his
2 testimony, quite honestly. The guy's a bright guy. I
3 learned a lot listening to him, so just in terms of the
4 origin.

5 As we look at the video, the claim was that in
6 the conversations that the Defendant claimed that he
7 brought the oil downstairs and for whatever reason, I'm
8 not sure why, but then he took the pictures of it to show
9 it to his roommate. But as we watched the video, we see
10 the roommate, Joey, the person identified, is actually
11 with him. So I'm not sure why you need a picture if the
12 guy's walking down the stairs with you.

13 Doesn't make a whole lot of sense to the Court
14 that you would drain a generator, the oil looks clean,
15 then to take two more gallon jugs of oil downstairs. I
16 guess I can arguably see you carrying two jugs of oil
17 through the house that are intact, unopened, or at least
18 the cap's on, but I can't even carry a cup of coffee. I
19 can't speak for the Defendant, but I don't know why you'd
20 carry a pan of oil all the way through your house and then
21 down into the basement and put it at the base of the
22 stairs next to a mattress. That doesn't seem to wash.

23 And based upon all that testimony -- let me see
24 what else I've got here. Oh, the first thing that popped
25 into mind, I mean, after hearing everything, what also

1 stuck out, and that was very early on in the testimony,
2 was when they indicated that he left the house and he had
3 it on the video, and the times came in much later.

4 Yeah. He leaves the house at 4:35:09. At
5 4:37:18, smoke's coming out of the house. There's no way
6 that he didn't smell smoke or at least for probable cause
7 purposes there's no way that the Court believes he didn't
8 smell smoke as he was walking out the door. That would
9 appear that he knew the house was on fire at that point
10 when he was leaving.

11 Then again, just as I had pointed out to myself,
12 oil under the stairs, lamp, halogen light, had the
13 ignition source, those were the, you know, three elements
14 that needed to get the fire going. And I think the
15 testimony's been clear that that's what started the fire.

16 So based on all that evidence, the Court -- and
17 the exhibits have been submitted, as well as I do think
18 there's a motive that -- a lot was made of the tax liens
19 and whatnot. Mr. Metz indicated -- alluded that they may
20 have been paid, but I certainly don't see any tax
21 clearances or release of federal tax liens. Nothing's
22 been submitted by the Defense that -- to that to indicate
23 those liens were ever released or any of those were
24 satisfied. Maybe the homeowner's association bank might
25 have been satisfied, but certainly the federal tax liens

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weren't satisfied.

The fact that the house was insured for what it was, I believe there's probable cause that the crime was committed. Probable cause to believe the Defendant committed it. Accordingly, the Court's going to bind over on all counts.

You're going to waive circuit court arraignment, Mr. Metz?

MR. METZ: Already did.

THE COURT: Already signed it? Okay.

MR. METZ: That's the only reason I got up while you were talking.

THE COURT: Yeah, no. I figured as much.

Yeah. If there's no other issues, bond's continue.

MR. METZ: Thank you, Your Honor.

MR. SIZEMORE: Thank you, Judge.

THE COURT: All right.

(At 5:13 p.m., proceedings concluded)

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CERTIFICATION

I certify that this transcript, consisting of 164 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Daniel B. Bain on Tuesday, February 15, 2022, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.



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