

STATE OF MICHIGAN

IN THE LIVINGSTON COUNTY CIRCUIT COURT

THE PEOPLE OF THE STATE OF MICHIGAN,

vs

Case No. 2022-27188-FH

PHILIP GERHARD NEUMEIER,

Defendant.

/

MOTIONS/EVIDENTIARY HEARING

BEFORE THE HONORABLE MATTHEW J. MCGIVNEY

Howell, Michigan - Wednesday, July 24, 2024

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Howell, Michigan

Wednesday, July 24, 2024

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(At 1:52 p.m., proceedings begin)

THE CLERK: Court calls case 22-27188-FH. The People versus Philip Neumeier.

THE COURT: Good afternoon. Appearances for the record, starting with the People.

MR. IDEMA: Good afternoon, Your Honor. Steve Idema on behalf of the prosecution.

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

THE COURT: Welcome.

We have two matters before the Court at this point in time. We have Defendant's motion to suppress evidence and Defense motion to quash the search warrant.

Is that accurate?

MR. METZ: That's correct, Your Honor.

MR. IDEMA: Yes, Your Honor.

THE COURT: Mr. Metz, these are your motions, what would you like me to know, sir?

MR. METZ: Well, Judge, I think the motions speak for themselves. I believe that we have Sergeant Harpe today, retired Sergeant Harpe here today, Officer Leeds, Mr. Zernick, fire marshal, and then maybe another

1 witness out there.

2 In terms of the suppression motion, there was a
3 fire that occurred on November 19th, 2019, warrant consent
4 wasn't needed to go to the house to put out the fire,
5 exigent circumstances. There came a time on the 19th a
6 fire was put out, exigent circumstances no longer existed,
7 fire and police left on the 19th, went back on the 20th
8 without consent, without a search warrant, I think there's
9 some discrepancy into -- in terms of when informed consent
10 was finally given by Mr. Neumeier, which wasn't until the
11 evening of the 21st, I know there's some allegations that
12 it was the 20th, but that's not the case.

13 So we are asking the Court to suppress, in
14 essence, anything that happened after they left on the
15 19th before the consent was given on the 21st and anything
16 thereafter that would be fruit of the poisonous tree.

17 In addition, the motion to quash, I think,
18 speaks for itself in terms of some items in the affidavit
19 that were not accurate.

20 THE COURT: I've read your motions, and I've
21 read the response. What would you like me to know, Mr.
22 Idema? And then we'll get to the procedural way we're
23 going to handle this.

24 MR. IDEMA: Okay. Yeah, Your Honor, I -- we do
25 have witnesses here if the Court would like to take

1 testimony to address both -- both motions. I'll rely on
2 my -- my responses in the briefs and support.

3 The only thing I want to address at this moment,
4 Your Honor, and to bring to the Court's attention is that
5 -- kind of reiterate with -- with what the case law
6 specifically states and the statutory language
7 specifically states, and where I think defense counsel is
8 absolutely wrong is that there was exigent circumstances
9 on the 19th, no doubt about that, fire suppression. Law -
10 - case law, constitutional law, and the statutory language
11 specifically states that the fire department, fire
12 personnel have absolute right to go into that home,
13 suppress that fire without a warrant. They also have the
14 statutory and constitutional authority to begin their
15 cause and origin investigation, both by Michigan Statute,
16 the -- the fire prevention code, along with -- as I cited
17 in my briefs, the -- the two cases are right on point that
18 came right out of Michigan -- Mich -- the U.S. Supreme
19 Court ruled on -- on these, and more specifically I think
20 our case is more on point with Michigan v Tyler, in the
21 sense of we had the -- the fire investigators on scene on
22 the 19th due to exhaustion and also lack of daylight they
23 decided to continue their investigation on the 20th, they
24 came back on the 20th and they continued their
25 investigation, and Michigan v Tyler specifically says that

1 is reasonable.

2 Now, in this particular case, and here is where
3 I totally disagree with -- with defense counsel's
4 representation of the facts. Yes, the police left after
5 the premises was secured by BELFOR Restoration, but the
6 police and the fire investigators never relinquished the
7 prop -- property back to Mr. Neumeier. He was told from
8 the start -- he was told the night of the 19th that they
9 were -- he was not going to be allowed back in the
10 premises, that they were securing it not only for public
11 safety concerns, but also for their -- their
12 investigation, for their cause and origin investigation.

13 He was also -- also informed that by -- during
14 the conversation on the 19th with -- and it's actually
15 Deputy Fire Chief Zernick, but at the time it was Fire
16 Marshal Zernick, he was -- he told him and he was told by
17 Officer Flavin that this was -- this was a fire that they
18 could -- would be potentially investigating it for
19 potential criminal activity. So he was informed on the
20 19th that we are turning this property back over to you at
21 this point, we are securing the property over -- or we are
22 securing the property and we're coming back the next day,
23 which they did. And the U.S. Supreme Court said that is
24 reasonable conduct on the -- on the part of the
25 investigators.

1 Now, I disagree with defense counsel. Whether -
2 - whether Defendant signed this consent form on the 20th
3 or on the 21st, it doesn't matter, he signed a consent
4 form, but if he signed it on the 20th, that's -- the
5 officers -- or the -- the investigators were not only
6 covered by the -- the Supreme Court case law and statute,
7 but they were also covered by his signed consent. If he
8 didn't sign it until the 21st, doesn't matter, he signed
9 it, so any investigation on the 21st and beyond is covered
10 by the case law, the statutory language and consent.

11 And the difference between our case and People v
12 -- or Michigan v Taylor and Michigan v -- v Griff -- or --
13 or Clifford, is that in both of those cases, law
14 enforcement had relinquished or turned over the property
15 back to the homeowner or back to the property owner before
16 the investigators came back, and yes, and the Supreme
17 Court basically said coming back many hours later, several
18 hours or several days later and conducting their -- their
19 cause and origin investigation without a search warrant or
20 without administrative search warrant or without consent,
21 that's unreasonable, but coming back the day after for
22 purposes of day light and exhaustion, to conduct their
23 cause and origin investigation, that's reasonable.

24 And that's the difference we have here is that -
25 - twofold. Number one, this was conducted the very next

1 day, and they obtained consent from the Defendant himself.
2 They had verbal consent on the 19th when the Defendant
3 asks fire -- the fire marshal to go in and obtain his
4 computer. They also had verbal consent. And if the Court
5 would like to take testimony, we fully anticipate having
6 Officer Flavin take the stand, and we're going to play his
7 body camera for the Court, and body camera will show the
8 Defendant specifically mentioning -- the officers didn't
9 even ask, the Defendant specifically mentions hey, I got
10 security cameras, you're more than welcome to go in and
11 get the -- get the DVR. He gave consent on the 19th for
12 them to go in and obtain evidence. He then has a
13 discussion, and that's also contained on the body camera,
14 with the officers saying hey, I -- I don't remember my
15 password, but you're more than welcome to contact the --
16 the agency that -- that's -- that controls the -- the
17 video recording and get the password and then use that for
18 your investigation.

19 So he gave consent, verbal consent on the 19th,
20 they had exigent circumstances on the 19th, they had
21 statutory authority on the 19th. On the 20th when they
22 came back, they had statutory authority, they had
23 constitutional authority, and he signs a consent form.

24 Furthermore, on the 12st when the insurance inv
25 -- fire investigator enters the pictures, he contacts the

1 Defendant and says hey, I represent your insurance
2 company, do you give me consent to go into your house and
3 provide me -- so that I can conduct my part and conduct my
4 cause and origin investigation, and he gave verbal
5 consent.

6 So you have statutory authority, constitutional
7 authority, and verbal and written consent.

8 So based off of that -- all those -- those
9 factors, that's why the People would ask the Court deny
10 the motion to suppress.

11 With regards to the motion to quash, I think my
12 -- the -- the People's response to that pretty much speaks
13 for itself, but I'll -- I'll outline that as well, and we
14 -- we intend, if the Court wants to take testimony on that
15 as well, we do have retired Detective Sergeant Harpe here
16 to testify as to representations he put into his affidavit
17 for the search warrant, but the bottom line is they've
18 made no assertion whatsoever as to any intentionally
19 falsified information being placed in the affidavit;
20 instead what they did is they pointed out, number one,
21 that it was just a typo on the -- the date of the -- or
22 the date of the fire, he typed in the affidavit that it
23 occurred on November 11th, when actually it occurred on
24 November 19th. He'll testify the reason to that is he
25 typed up the search warrant on December 11th, he just put

1 the wrong date in there. But even if the Court takes the
2 date off -- eliminates or puts a red line through that,
3 doesn't even consider the date of the fire, it doesn't
4 detract from the probable cause that's contained within
5 that paragraph and within the -- the rest of the
6 affidavit.

7 The second issue contained in their motion to
8 quash is that they claim that detective sergeant's
9 representation that he had training and experience in fire
10 investigations was a misleading or false statement,
11 because during the preliminary examination testimony he
12 said well, I'm not an expert. Well, Your Honor, there's a
13 big difference between having training and experience in
14 fire investigations and being qualified as an expert,
15 there's a huge difference there, and that was actually
16 addressed in the prelim testimony. He went through what
17 his qualifications were and he went through what his
18 training experience was. There's no indication that --
19 that he made any representations that were false in the
20 affidavit. He never claimed in the affidavit he was an
21 expert in cause and origin or fire investigations; all he
22 represented was I have training and experience, which he
23 testified to at the exam.

24 And then lastly, Your Honor, the third issue
25 they put in their motion to quash, they're claiming that

1 he put false -- intentionally falsified information with
2 regards to an invalid or an involuntarily signed consent
3 to search form. Well, Your Honor, he submitted that
4 application -- or the affidavit on December 11th for the
5 magistrate's review. They had -- he had from the -- the
6 fire marshal, from the -- from the Hamburg Township Police
7 Department, he had a signed consent form, which I provided
8 to the Court as well by the Defendant. Defense isn't even
9 arguing he didn't sign it. He's just arguing he signed it
10 on the 21st and not the 20th. Well, regardless of what
11 day he signed it, he signed it. And the detective
12 sergeant put that information in his affidavit. There's
13 nothing false about that in the affidavit whatsoever.

14 So based off of that, Your Honor, there's only
15 three things defense is alleging that were intentionally
16 falsified in the affidavit, and those just are not true.
17 So based off of that, Your Honor, People would ask the
18 Court deny the defense motion to quash as well, and if the
19 Court would like to take testimony on those two, we have
20 the people here for that. Thank you.

21 THE COURT: The Court does have before it a 160-
22 page transcript from the preliminary examination. It
23 seems like all those issues were well vetted out at that
24 point in time, Mr. Metz.

25 Do you still wish to have an evidentiary hearing

1 regarding these two matters?

2 MR. METZ: Yeah, I do, Judge, and I -- I think
3 that some of what Mr. Idema has said, not because he said
4 it intentionally, but is not accurate, at an exam
5 obviously it's just probable cause whether a crime was
6 committed and if this person committed it. It's a very
7 low standard. A lot of judges in district court, whether
8 it's right or wrong, won't even go beyond that in terms of
9 search issues, etcetera. I just had one recently within
10 the past month.

11 So yeah, I do think that some of the testimony
12 that would be garnered today -- Officer Leeds never
13 testified at the exam, first and foremost, and she is here
14 today, but some of the testimony that came out of the exam
15 had nothing to do with these two issues that I filed a
16 motion on.

17 THE COURT: I wouldn't say nothing to do with.

18 MR. METZ: I'll retract that. But it doesn't --
19 it doesn't have anything to do with the two issues at
20 hand, Your Honor.

21 THE COURT: Okay. In terms of your first
22 witness, Mr. Metz?

23 MR. METZ: Well, it is the burden of the People,
24 but I'm happy to call witnesses.

25 THE COURT: Do you want to call witnesses?

1 MR. IDEMA: I -- I can do that, yes, Your Honor.

2 THE COURT: Go ahead.

3 MR. IDEMA: Thank you, Your Honor.

4 We'll start with Officer Kim Leeds.

5 THE COURT: Good afternoon, officer. Please

6 remain standing and raise your right hand and take an

7 oath.

8 THE CLERK: You do solemnly swear or affirm that

9 the testimony you shall give in the matter before the

10 court will be the truth, the whole truth, and nothing but

11 the truth?

12 KIM LEEDS: Yes, ma'am.

13 (At 2:06 p.m., witness sworn)

14 THE COURT: Officer, please state your full

15 legal name for the record and just spell the last.

16 THE WITNESS: Kimberly Marie Leeds, L-e-e-d-s.

17 THE COURT: Officer Leeds, have you ever

18 testified in court before?

19 THE WITNESS: Yes, sir.

20 THE COURT: The microphone ahead of you in my

21 courtroom is lit up in red. It's only recording. Please

22 speak up in a loud voice so we can all hear your

23 responses. If there's an objection being lodged by either

24 counsel, please let the Court resolve that objection

25 before you answer any additional -- any additional

1 questions.

2 Do you have any questions for me?

3 THE WITNESS: No, sir.

4 THE COURT: Go ahead.

5 MR. IDEMA: Thank you. Your Honor, before I get
6 started taking her testimony, we do have one housekeeping
7 matter.

8 At this point in time with this witness I -- I
9 do intend to use People's proposed Exhibit Number 1, which
10 is a Hamburg Township Fire Department fire investigation
11 consent to search form. In discussion with defense
12 counsel, I believe we had a stipulation for purposes of
13 this hearing to the admission of People's proposed Exhibit
14 1.

15 MR. METZ: That's correct, Your Honor.

16 THE COURT: Where would that exhibit be?

17 MR. IDEMA: It's right here.

18 THE COURT: Can I take a look at it?

19 MR. IDEMA: Yes.

20 THE COURT: Thank you. The Court has before it
21 a Hamburg Township Fire Department fire investigation
22 consent to search, which is marked as People's Exhibit 1.
23 We will admit People's Exhibit 1 without objection.

24 You can approach. Exhibit 1 is done.

25 MR. IDEMA: Thank you, Your Honor.

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THE COURT: And admitted.

(At 2:08 p.m., PX-1 was received)

MR. IDEMA: Appreciate it. Thank you, Your Honor.

KIMBERLY LEEDS

called as a witness, testified as follows:

DIRECT EXAMINATION

BY MR. IDEMA:

Q With that, Officer Leeds, can you briefly describe how is it you're currently employed and how long have you been employed in such capacity?

A I am a police officer for Hamburg Township Police Department. I have been an officer for 15 years, employed at Hamburg for 11, and currently working as the department investigator.

Q Okay. And were you working in such capacity back on -- in November of 2019?

A I was.

Q And prior to coming to court today were you -- did you have any discussions with either myself or other Hamburg Township Police Department personnel with regards to investigation involving a Philip Neumeier?

A Yes.

Q And prior to coming to court today were you informed as far as the purpose of your testimony here today?

1 A Yes.

2 Q Okay. And just so we're clear, were you part of or did
3 you assist in the investigation involving the arson at
4 7809 Winans Lake Road back on November 19th, 2019?

5 A I did not.

6 Q And can you describe to the Court, first of all, what
7 involvement, if any, did you have on this case?

8 A I was working as a patrol officer at that time, so I did
9 not have any involvement in the case.

10 Q Okay.

11 A The only involvement I have is that form.

12 Q Okay. And by -- when you say that form, you're talking
13 about People's Exhibit 1?

14 A Yes, sir.

15 Q That was just admitted? Okay. And were shown this,
16 People's Exhibit 1 prior to coming to court today?

17 A Yes, sir.

18 Q And just so we're clear --

19 MR. IDEMA: May I approach the witness?

20 THE COURT: Sure.

21 BY MR. IDEMA:

22 Q Officer Leeds, with regards to People's Exhibit 1, do you
23 recognize that exhibit?

24 A I recognize my initials and my badge number at the bottom
25 of it.

1 Q Okay. And prior to coming into court today, did you have
2 a chance to look at that document?

3 A Yes, sir.

4 Q Okay. And on that document towards the bottom there
5 there's a place for a witness to sign; is that correct?

6 A Yes, sir.

7 Q Okay. Were you that witness or does it indicate that you
8 were that witness that signed?

9 A My initials and badge number are at the bottom of that
10 form, yes.

11 Q Okay. You keep saying your initials and badge number.

12 So first of all, do you recognize -- is that
13 your signature or your handwriting with regards to your
14 initials and badge number?

15 A The initials and badge number are my handwriting and my
16 signature. The remainder of my information is not
17 something that I wrote.

18 Q Okay.

19 Now, with regards to that document, is there a
20 date on it?

21 A The date on the form lists -- yes, November 19th, 2019.

22 Q Okay. Now, there are actually two sections in this form
23 that says November 19th, 2019, correct?

24 A Correct.

25 Q And can you just -- just read for the record, if you could

1 just read that document from start to finish, please?

2 A I'll do my best without my readers.

3 I, Philip Neumeier, willingly give my permission
4 to Fire Marshal, F.M., Fire Marshal Jordan Zernick of the
5 Hamburg Township fire investigation unit in assisting
6 individuals and/or departments to enter and conduct a
7 complete search of the vehicle, structure or other
8 described object of the fire located at 7809 Winans Lake
9 Road, to investigate the fire that occurred on or about
10 November 19, 2019, at 15:39 hours. This voluntary consent
11 will include all of the grounds, buildings, and vehicles
12 under my control at the above described location. I
13 further give my permission to remove any attached or
14 unattached material, document, or property so it may be
15 analyzed, examined or tested. I understand articles
16 removed may be used as evidence in the case under
17 investigation. The consent to search shall be valid for
18 90 days. This written consent to search is given
19 voluntarily without threat or promise at, blank, p.m. --
20 a.m., p.m. There's no time written in there. On
21 November, day of 19, 2019.

22 And then there's two signatures, one which is
23 illegible with an address of 7809 Winans Lake Road, and
24 then the witness is listed as HTPD Officer Kim Leeds with
25 my initials.

1 Q Okay. Now, this document with regards to the -- the
2 section that -- well, first of all, as you read through
3 that there is certain like lines with handwritten entries,
4 correct?

5 A Correct.

6 Q And just so we're clear, was that your handwriting on this
7 document?

8 A The only handwriting on the document that is mine is the K
9 and the L initial at the bottom with the number 726.

10 Q And do you know whose handwriting that was or who filled
11 out this form?

12 A It's my understanding that Fire Marshal Jordan Zernick
13 filled this form out.

14 Q And just for the record, the very top of the form actually
15 says lead investigator Fire Marshal Jordan Zernick; is
16 that correct?

17 A Correct.

18 Q Okay. Did you see him fill this document out?

19 A I do not recall.

20 Q Okay. With regards to -- so -- just so we're clear,
21 though, where it says witness and address and telephone
22 number, you did not fill that out; is that fair to say?

23 A That's accurate, I did not fill that out.

24 Q It's your assumption that Fire Marshal Zernick filled that
25 out?

1 A It's my understanding, yes.

2 Q It's your understanding? Okay.

3 A Yes.

4 Q But that is, in fact, your initial and badge number and
5 you put that on there?

6 A Correct.

7 Q Okay.

8 Do you recall -- so the fire itself took place
9 on November 19th. Were you on scene or did you go to the
10 fire scene?

11 A I did not.

12 Q Were you working at the station on that day?

13 A I was not.

14 Q Okay. Were you working at the station on the 20th?

15 A I checked my schedule. I was working on the 20th and the
16 21st on midnight shift.

17 Q 20th and the 21st?

18 A Yes, sir.

19 Q So -- and can you just describe how is it -- prior to
20 coming into court today, what did you do to verify -- I
21 know this is a while ago, what did you do to verify your
22 work schedule and where were you during that timeframe?

23 A Excuse me. Our administrative assistant went back through
24 our work schedules which are stored in the computer to
25 confirm that I worked those two days on midnight shift.

1 Q Okay. So do you have any recollection as to whether or
2 not you initialed that on the -- on the 20th or the 21st?

3 A I do not recall.

4 Q Okay. Do you have any -- any recollection or do you have
5 any knowledge as to whether or not this was signed at the
6 -- the Hamburg Township Police Department?

7 A I don't have any recollection of this --

8 Q Okay.

9 A -- at all.

10 Q And kind of sounds like a silly question, but is there any
11 reason as to why you don't have any recollection of that?

12 A It was a long time ago. I was working the road at the
13 time. In -- in that timeframe, I was on patrol, and I was
14 not involved in any aspect of the investigation, so it was
15 not something that I would have retained memory wise; that
16 I would have thought to retain.

17 Q Now, it says witness at the top -- just before the
18 signature of the person, it says this -- this consent to
19 search shall be valid for 90 days, this written consent to
20 search is given voluntarily within or without threat or
21 promise on this November day of 19, 2019.

22 A Correct.

23 Q And then there's a signature that is kind of illegible.

24 A Correct.

25 Q And then there's a section that says witness, and that's

1 where you initialed it?

2 A Correct.

3 Q Is that -- when you initialed it, is that basically -- are
4 you initialing that you witnessed that person sign this
5 document?

6 A I don't recall.

7 Q Would there be another reason why you would sign this
8 document?

9 A No.

10 THE COURT: Mr. Idema, do you have additional
11 copy for the Court to review as a submitted exhibit? I'd
12 like to follow along with --

13 THE WITNESS: I -- I can --

14 MR. IDEMA: Yes, absolutely. I'm sorry, Your
15 Honor, I thought it was part of my responses.

16 THE COURT: Thank you.

17 MR. IDEMA: Yep.

18 BY MR. IDEMA:

19 Q So, I'm sorry, Officer Leeds, even though you can't
20 recall, and I guess we should clarify, do you recall --
21 when you say you can't recall, is it you can't recall why
22 you signed it, or you can't recall who signed it that you
23 are attesting to witnessing sign it?

24 A I don't recall the encounter that led to the signature on
25 this form. I don't recall meeting with the parties on the

1 form. I don't -- I don't have any recollection of that
2 incident.

3 Q Okay.

4 A But I -- I can say that I would not have signed it
5 afterwards if I was not present for it.

6 Q Okay. That's -- that's what I'm getting at. You're
7 signing that as a witness to somebody else signing the
8 document; is that fair to say?

9 A That's fair.

10 Q Okay. You just don't remember the incident and can't
11 recall?

12 A Correct.

13 Q But your signature or your initials is on that, you did
14 sign it?

15 A Correct.

16 Q Fair to say you don't recall if it was November 20th,
17 2019, or November 21st, 2019?

18 A That's fair to say.

19 Q Okay. Thank you.

20 MR. IDEMA: I have nothing further of this
21 witness, Your Honor.

22 THE COURT: Mr. Metz?

23 MR. METZ: Thank you, Judge. I think most of
24 what needs to be asked was asked, but I'm going to go over
25 a couple things real quick.

CROSS-EXAMINATION

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BY MR. METZ:

Q Under no circumstances you were working on the 19th,
correct?

A Correct.

Q Never at Winans Lake Road on the 19th?

A Correct.

Q Have you ever been at 7809 Winans Lake Road for anything?

A Not to my recollection.

Q Okay. The form itself does indicate this written consent
to search given voluntarily with or without -- it says
November 19th, 2019. But we're very clear that there's no
way of November 10th, 2019, that you witnessed anybody
sign this form, correct?

A I was not working on November 19th --

Q Right. Okay.

A -- correct.

Q And you don't even re -- how many -- how many of these
fire investigation consent to search forms have you done
over the past five years?

A I have never seen one before.

Q At least once I hope you did, right?

A This -- this is --

Q This one?

A -- the only I've ever --

1 Q Okay.

2 A -- seen.

3 Q Okay. So once. And you don't have any independent
4 recollection of the one in your career that you did where
5 that took place?

6 A No.

7 Q So you don't know if it was at the department or outside
8 of the department?

9 A I do not know.

10 Q Okay. You don't know if it was in an interrogation room
11 or not inside of an interrogation room?

12 A We have an interview room, but I don't recall where the --
13 where this meeting.

14 Q Okay.

15 A I would imagine it was in our interview room, but I can't
16 speculate to that.

17 Q And even though you assume Fire Marshal Zernick was the
18 one who presented and wrote out this form, do you know if
19 he was there while you supposedly witnessed this form on
20 the 20th or 21st?

21 A I would not have orchestrated a meeting with Mr. Neumeier,
22 so somebody else had to have been present.

23 Q Okay. But you don't know who?

24 A I -- I have recollection of this --

25 Q Okay.

1 A -- meeting.

2 Q And when you do something like this, is it put on your
3 daily log at the department, or because this was so
4 inconsequential, is it not in your daily log?

5 A I don't know. I did not check the daily.

6 Q You didn't check that? Okay.

7 A No.

8 Q You've got no reason to doubt that -- well, you very much
9 have reason to doubt it wasn't signed on November 19th,
10 correct?

11 A I was not working on --

12 Q Right.

13 A -- the 19th, so correct.

14 Q But you have no reason to doubt that any signature
15 wouldn't have come until the 21st?

16 A I guess -- can you rephrase the question? I guess --

17 Q Yeah. You have no reason to doubt that any signature
18 actually wouldn't have happened until the 21st?

19 A I -- I would believe it would believe the 20th or the
20 21st, because --

21 Q Okay.

22 A -- those are the days I worked.

23 Q And when you say midnight shift, what is midnight shift?

24 A Six p.m. to six a.m.

25 Q Okay. So sometime on one of those two dates at six p.m.

1 or thereafter, correct?

2 A Correct.

3 Q Okay. And do you recognize the person sitting with me
4 today at all?

5 A I do not.

6 Q Okay.

7 MR. METZ: If I can have a quick second, Judge?

8 THE COURT: Sure.

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

10 Thank you, Ms. Leeds.

11 THE COURT: Any additional questions, Mr. Idema?

12 MR. IDEMA: No, Your Honor. Thank you.

13 THE COURT: Is this witness under subpoena for
14 today?

15 MR. IDEMA: She is, Your Honor.

16 THE COURT: Can she be excused?

17 MR. IDEMA: Yes, please.

18 THE COURT: You're excused, ma'am. Thank you.

19 THE WITNESS: Thank you.

20 (At 2:21 p.m. witness excused)

21 THE COURT: Thank you, Your Honor. With that
22 I'd like to call Deputy Fire Chief Jordan Zernick.

23 THE COURT: Good afternoon, sir.

24 JORDAN ZERNICK: Hello, sir.

25 THE COURT: Can I have you remain standing and

1 raise your right hand and take an oath?

2 THE CLERK: You do solemnly swear or affirm that
3 the testimony you should give in the matter before the
4 Court will be the truth, the whole truth, and nothing but
5 the truth?

6 JORDAN ZERNICK: I do.

7 (At 2:22 p.m., witness sworn)

8 THE CLERK: Thank you.

9 THE COURT: You can have a seat.
10 Please state your full legal name for the record
11 and just spell the last.

12 THE WITNESS: Jordan Christoher Zernick, Z-e-r-
13 n-i-c-k.

14 THE COURT: Are you deputy fire chief, is that
15 what I heard?

16 THE WITNESS: That's correct.

17 THE COURT: Have you ever testified in court
18 before, deputy fire chief?

19 THE WITNESS: One time.

20 THE COURT: In this courtroom here, my -- the
21 recording device in front of you is lit up in red. It
22 only records, it does not amplify. We're going to have
23 you speak up in a -- in a loud voice so we can properly
24 record these proceedings. If there's an objection being
25 lodged at any point during these evidentiary hearings,

1 please do not continue to answer that question, let the
2 attorneys and myself resolve that objection, and I'll let
3 you know whether you can answer that question or not, you
4 understand?

5 THE WITNESS: Yes.

6 THE COURT: We do not understand head nods or
7 head shakes, nonverbal answers, we only understand yes,
8 no, and any other type of verbal answers. Head nods, head
9 shakes do not suffice, you understand that?

10 THE WITNESS: Yes.

11 THE COURT: Do you have any questions for me?

12 THE WITNESS: No.

13 THE COURT: Go ahead.

14 MR. IDEMA: Thank you, Your Honor.

15 JORDAN ZERNICK

16 called as a witness, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. IDEMA:

19 Q Deputy Fire Chief Zernick, can you just briefly for the
20 record describe how is it you're currently employed, what
21 are your job functions, how long have you been employed in
22 such capacity?

23 A I work for the Hamburg Township Fire Department. I'm a
24 deputy fire chief. I've been employed there for 16 years.

25 Q And how long have you been deputy fire chief?

1 A Since 2022.

2 Q Okay. Were you working with the fire department back in
3 2019?

4 A Yes.

5 Q Specifically November 2019?

6 A Yes.

7 Q And were you -- was your job title back then fire marshal?

8 A Yes.

9 Q Okay. And were you part of the response fire --
10 firefighter response team that went to a fire at 7809
11 Winans Lake Road back on November 19 of 2019?

12 A Yes.

13 Q And were you one of the first -- first responders to the
14 scene?

15 A I was the operator of the lead pumping engine.

16 Q Okay. And can you just briefly describe what -- what were
17 your responsibilities on November 19th at the fire?

18 A Initially on my arrival, I was the first in the
19 suppression crew with Deputy Chief Chamberlain from Green
20 Oak Township. We went in, suppressed the fire, and then
21 as the -- as we progressed into the overhaul stage, I
22 transitioned to an investigative mode.

23 Q And when you say transitioned into investigative mode,
24 what -- what does that mean?

25 A I was not involved in the operations of the -- the

1 overhaul of the incident. I was moved into looking into
2 the origin and cause of the fire.

3 Q Okay. And just so we're clear with regard -- just for the
4 record, when you say not involved in the overhaul of
5 operation, what is the overhaul?

6 A Overhaul is the process of going through the occupancy and
7 ensuring that there's no hot spots, there's no areas
8 within the space that may still be smoldering or anything
9 of that nature.

10 Q Okay. And when you say you transitioned into the cause
11 and origin investigation, can you briefly describe what,
12 if anything, did you do on November 19th with regards to
13 the cause and origin investigation?

14 A I spoke with Mr. Neumeier. I did a brief walkthrough of
15 the occupancy, both interior and exterior. We documented
16 the scene with some photographs the night of, and that was
17 pretty much it.

18 Q Okay. And when you say we took some photographs, who is
19 we?

20 A I physically took photographs.

21 Q You did?

22 A Yeah.

23 Q Okay. And all -- all together how long would you say you
24 were on scene?

25 A A number of hours. I -- I can't really tell you exactly.

1 I mean, we were there -- it was well after dark, and we
2 got there -- I think I would have to refer to my report of
3 what time we arrived on scene, but it was between three
4 and five I think that we arrived on scene.

5 Q Okay.

6 A Sometime between then.

7 Q And when -- when you transitioned into the cause and
8 origin part of the investigation, did you have any
9 assistance?

10 A Officer Flavin from the police department.

11 Q Okay.

12 THE COURT: I'm sorry; between three and five
13 a.m. or p.m. on the 19th?

14 MR. IDEMA: I'm sorry, yes.

15 THE WITNESS: It was p.m.

16 THE COURT: Between three p.m. and five p.m. on
17 the 19th?

18 THE WITNESS: I believe it -- my report will
19 tell you exactly what the time of dispatch was to the time
20 that we cleared.

21 BY MR. IDEMA:

22 Q And just so we're clear, military time three p.m. is
23 15:00; is that correct?

24 A That's correct.

25 Q Okay. Do you recall when you left the scene? Skipping

1 ahead, but do you recall when -- when -- when did you
2 leave the scene?

3 A I would have to refer to my report. I can't tell you
4 exactly what time I left.

5 Q Okay. But fair to say several hours after the three p.m.?

6 A Yes.

7 Q Okay.

8 With regards to the cause and origin
9 investigation, did you conduct or did you do any
10 evaluation of the exterior or interior prior to Officer
11 Flavin showing up to the scene?

12 A No.

13 Q Okay. And just so we're clear, Officer Flavin was not
14 originally on scene, right?

15 A Correct.

16 Q He was called to the scene?

17 A Yes.

18 Q As a matter of fact he was, I believe, off duty that
19 particular day, right?

20 A Yes.

21 Q Okay. So you did not conduct your investigation until he
22 arrived; is that fair to say?

23 A Yes.

24 Q When he arrived did the two of you do a 360 walk around of
25 the exterior?

1 A Yes.

2 Q Did you document it by taking photographs or taking notes?

3 A Yes.

4 Q And then -- I guess real quick, what's the purpose of
5 doing the 360 of the exterior?

6 A Just to get a -- an outside look of the occupancy, see
7 what the layout of the -- the -- the space is, and
8 anything that may exist out -- outside.

9 Q Okay. And did the two of you then go into the residence
10 and do an interior evaluation?

11 A Yes.

12 Q Now, with regards to the events of the -- the night of the
13 19th, was it your intention to do a thorough complete
14 investigation at that point in time?

15 A No.

16 Q Can you describe why not and what -- what did you do?

17 A Because we had been on scene for a number of hours at that
18 point. As I believe I said in my original testimony,
19 spoke to the fact of physical exhaustion played a role,
20 and the fact that it was dark, and we were just ready to
21 be done that evening, to be honest.

22 Q Okay. Was there a -- a -- were you able to do a thorough
23 investigation at that point in time?

24 A No.

25 Q When you say -- what -- what were you able to do?

1 A Just a preliminary walkthrough.

2 Q Just a preliminary walkthrough?

3 A Mm-hmm.

4 Q Okay. Was there a discussion between you and Officer
5 Flavin as far as procedurally what are you going to do at
6 that point and when are you going to continue?

7 A Yes.

8 Q And can you describe that for the Court?

9 A We both came to the determination that it was best that we
10 waited until the following morning to pick up with the
11 investigation.

12 Q Okay. And while you were on the scene with Officer
13 Flavin, did you make contact with the homeowner?

14 A Yes.

15 Q And was the homeowner identified to you?

16 A Yes.

17 Q And was his name Philip Neumeier?

18 A Yes.

19 Q And did you personally have contact with Mr. Neumeier?

20 A Yes, I had contact with Mr. Neumeier prior to Officer
21 Flavin's arrival.

22 Q I'm sorry, when --

23 A I had contact with -- with Mr. Neumeier prior to Officer
24 Flavin's arrival.

25 Q Prior to?

1 A Yes.

2 Q Can you describe that contact with -- with Mr. Neumeier?

3 A Mr. Neumeier and I had a conversation down at the street
4 when we were still in the operations mode. He had arrived
5 on scene. I was notified by the water supply officer,
6 which is Fire Chief Kevin Gentry, that he was there. I
7 was instructed by the incident commander to go make
8 initial contact with Mr. Neumeier. I went down to the
9 bottom of the driveway, made contact with Mr. Neumeier,
10 advised him that at that point he could not come up to the
11 residence because it was not safe as we were very much in
12 the overhaul and operational mode on the -- on the scene,
13 and that I would get him up there when it was -- when it
14 was safe.

15 Q Okay. And was -- was that -- how long was that encounter
16 with the Defendant, who is Mr. Neumeier?

17 A Minutes.

18 Q Minutes. Did you have a second encounter with him?

19 A Yes.

20 Q When was that?

21 A That was after Officer Flavin's arrival. It was in the
22 driveway up at the occupancy.

23 Q Okay. And so did you have face-to-face contact with Mr.
24 Neumeier?

25 A Yes.

1 Q I know it's been a while ago, but would you be able to
2 recognize Mr. Neumeier -- Neumeier again if you saw him
3 again?

4 A Yes.

5 Q Is he in the courtroom today?

6 A Yes.

7 Q Can you please point him out, describe an article of
8 clothing he's wearing?

9 A Gray suit with a maroon shirt.

10 MR. IDEMA: Your Honor, may the record reflect
11 the identification of the defendant by this witness?

12 THE COURT: Any objection, Mr. Metz?

13 MR. METZ: None, Judge. Thank you.

14 THE COURT: The record shall so reflect Mr.
15 Neumeier is sitting next to his attorney, Mr. Metz.

16 MR. IDEMA: Thank you, Your Honor.

17 BY MR. IDEMA:

18 Q Now, Deputy Fire Chief Zernick, when you had contact with
19 the Defendant the second time, can you describe the nature
20 of that contact and what, if anything, was -- was
21 discussed?

22 A I mean there was a quite lengthy conversation. We were
23 describing what happened, what process we were in, we
24 still had individuals on scene that were checking for hot
25 spots, because we had some spaces that were still

1 smoldering visibly from the exterior. We discussed what
2 happened leading up to that fire with Mr. Neumeier. We
3 described the processes that were going to take place --

4 Q When you -- when you state you described the processes
5 that was going to take place, can you describe to the
6 Court what process -- what processes were you talking
7 about and what did you tell him?

8 A We just discussed that we were going to be conducting an
9 origin and cause investigation.

10 Q So you told him on scene --

11 A Yes.

12 Q -- on the 19th you were going to do a cause and origin
13 investigation?

14 A Yes.

15 Q Did he inquire as to whether or not he could go into the
16 residence?

17 A Yes.

18 Q And what did you tell him?

19 A He would not be able to.

20 Q And what was the reason why you told him he would not be
21 able to go in?

22 A Because we were conducting an origin and cause
23 investigation.

24 Q Okay. Did you have discussion with him about securing the
25 residence for the -- for the night?

1 A Yes.

2 Q And what, if anything, did you tell him about securing the
3 residence?

4 A That building was going to be completely boarded up that
5 evening by BELFOR Property Restoration. It was going to
6 be what they described as an investigative board-up, and I
7 would be the only individual as a representative of the
8 fire department that would have a key to the occupancy.

9 Q And did you make that clear to him that that -- that you
10 would be the only one who would have access to the
11 residence?

12 A Yes.

13 Q Okay. And was there any discussion as far as any property
14 or any items that were inside the residence?

15 A Yes.

16 Q What were those discussions and -- and what -- what
17 transpired from those discussions?

18 A There were two discussions in regards to property. One of
19 a tower computer that was requested by Mr. Neumeier that
20 we recovered for him, which I did, and --

21 Q When you say -- I'm going to stop you there.

22 You said with regards to a tower computer. Can
23 you just briefly describe to the Court the nature of that
24 -- how did that play out and -- and what did you do?

25 A He was discussion with I believe Mr. Simpson at the time

1 about a computer that he had on scene, was wondering what
2 the status of it was, I said that we could go in and check
3 on it, asked the -- him the location, he asked if we could
4 recover it for him and we did.

5 Q Now, was there also further discussions as far as
6 retrieving other items as to -- not other -- but just
7 retrieving just in general items out of the house and why
8 it would not be prudent to do so?

9 A Yeah, we had a discussion in reference to -- it was more
10 of a generic statement regarding the items within his
11 home. I advised him it was within his best interests to
12 not remove anything from the property, so -- because an
13 insurance adjuster was going to want to come in and take
14 inventory of everything and I didn't want there to be any
15 debate as to whether the item was in the space or not at
16 the time of the fire.

17 Q Now, when you're having this contact with the Defendant,
18 had you already been in and conducted the -- the primar --
19 primary --

20 A The initial walk through?

21 Q -- evaluation?

22 A Yes.

23 Q Or preliminary?

24 A Officer Flavin and I had walked through the occupancy,
25 yes.

1 Q Okay. So you'd done that before and now you're having
2 this contact with -- with the Defendant outside?

3 A Yes.

4 Q At that point in time did you know that this was a
5 criminal investigation?

6 A No.

7 Q Did you have any indication that this -- that this was
8 going to turn into a criminal investigation?

9 A No.

10 Q When he's discussing with you this computer tower, did he
11 ask you to go inside and retrieve it for him?

12 A Yes.

13 Q Did you do that?

14 A Yes.

15 Q You actually went inside the residence and retrieved his
16 computer?

17 A Yes.

18 Q Did he tell you specifically where you could find this
19 computer tower?

20 A Yes.

21 Q And did you find it directly where he told you it would
22 be?

23 A Yes.

24 Q Deputy chief -- fire chief, why -- why did you go -- after
25 telling him about the insurance adjuster, why did you go

1 in and get the tower for him?

2 A Poor decision on my part, I -- I guess. I mean it's
3 people's personal items; sometimes just giving them one or
4 two things in the -- that situation gives them a sense of
5 comfort or -- it is what it is.

6 Q Okay.

7 A Live and learn.

8 Q And you also said there was a Mr. Stinson there?

9 A Correct.

10 Q Was this Joseph or Joey Stinson?

11 A Yes.

12 Q And was he identified?

13 A Was he --

14 Q Was he identified to you as being in -- or being connected
15 to this residence?

16 A Yes.

17 Q Okay. And who is he and -- and what was his connection to
18 the residence?

19 A He was a friend and I believe business partner with Mr.
20 Neumeier that was -- frequently was at the occupancy.

21 Q Okay. Was there discussion with him as far as retrieving
22 items from the home as well?

23 A I don't recall. I do remember him speaking about -- he
24 was -- his space was above the garage, but I don't
25 specifically recall.

1 Q Okay. Now you said there was a second item that was
2 discussed about retrieving from the residence?

3 A Yes.

4 Q What was that second item?

5 A A video surveillance DVR, home surveillance system.

6 Q And can you describe the nature of that discussion; what
7 was said and -- and what was done?

8 A Mr. Neumeier advised that hey, I do have a home security
9 system, you guys are welcome to go get it and retrieve it
10 if you would like, and if you can get into it, access the
11 footage.

12 Q Okay. And did he give a specific location as to where the
13 equipment for this -- this security camera system would
14 be?

15 A Yes, it was in the front laundry room.

16 Q Okay. And did you go into the residence to locate this --
17 I'm sorry, was it a DVR system?

18 A Yeah, home security, DVR.

19 Q Okay. And did you actually go into the residence and
20 locate it?

21 A Yes.

22 Q And was it -- was it located specifically where he said it
23 would be?

24 A Yes.

25 Q Okay. And what, if anything, did you do with that -- that

1 home surveillance system, DVR?

2 A We collected it that evening and turned it over to
3 Detective Sergeant Harpe.

4 Q Okay. Now, everything we're talking about, that all
5 occurred on the evening of -- or nighttime hours of
6 November 19th, 2019, correct?

7 A With the exception of turning it over to Detective Harpe;
8 that was turned over on the 20th.

9 Q That was turned over to Detective Harpe on the 20th?

10 A Correct.

11 Q Okay.

12 So after retrieving the -- the -- the security
13 camera equipment, what if anything, did you do at that
14 point?

15 A I believe we did a walkthrough of the occupancy. There
16 was questions to the status of a safe that Mr. Neumeier
17 was -- was asking about, wanted to ensure that the safe
18 was still intact, and then there was question brought up
19 in regards to the security of a potential firearm in the
20 occupancy, so we ensured that the firearm was secure as
21 well.

22 Q Now, when you say we ensured, was --

23 A Officer Flavin and myself.

24 Q -- this you and Officer Flavin?

25 A Yes.

1 Q Was there anyone else?

2 A No.

3 Q Okay. So after all that was -- was done, did you exit the
4 residence?

5 A Yes.

6 Q And did you then have a further conversation with the
7 Defendant?

8 A Yes.

9 Q Okay. And what, if anything, did he say at that point?

10 A I don't recall.

11 Q Okay. As far as your contact -- well let me ask you this,
12 with regards to your fire investigation in general --

13 A Mm-hmm.

14 Q -- is there a form that you carry with you called a fire
15 investigation consent to search form?

16 A Yes.

17 Q And can you describe to the Court, first of all, what is
18 that form and why do you typically carry it with you?

19 A It's a form that the homeowner reviews and -- and signs
20 giving us consent to conduct an origin and cause
21 investigation.

22 Q Okay. And is that part of the normal documentation you
23 would have with you in your vehicle or on scene?

24 A Yes.

25 Q And was there a discussion with Officer Flavin about

1 whether or not you had a form on scene?

2 A Yes.

3 Q And did you check to see if you had a consent form at that
4 time?

5 A Yes.

6 Q And did you have a consent form on -- in your vehicle on
7 the 19th?

8 A No.

9 Q Did you make any attempts to have Mr. Neumeier sign a
10 consent form?

11 A Yes.

12 Q Okay.

13 First of all, why -- what would be the purpose
14 and why would you seek consent from Mr. Neumeier to search
15 the -- the residence?

16 A It's standard practice when conducting an origin and cause
17 investigation.

18 Q Okay. What steps, if any, did you take to get him to sign
19 a consent form?

20 A Mr. Neumeier and I had conversation about him coming into
21 the police department to sign the document.

22 Q Okay. And when was that conversation held?

23 A I believe the following day on the 20th.

24 Q The following day on the 20th. And did you eventually
25 have contact with him at the -- would this be the Hamburg

1 Township Police Department?

2 A Yes.

3 Q And why -- was there discussion as far as having that --
4 having that done at the police department?

5 A Yes.

6 Q Was there purpose for having it done at the police
7 department?

8 A Yes.

9 Q What was that purpose?

10 A So that it was under video surveillance.

11 Q Okay. Were you under the impression that the police
12 department would have either a -- an interrogation room
13 that was recorded or a surveillance camera --

14 A Yes.

15 Q -- that would show this -- this document being signed?

16 A Yes.

17 Q Okay. And did you actually go to the Hamburg Township
18 Police Department on the 20th to have it signed?

19 A Was either the 20th or the 21st, yes.

20 Q 20th or the 21st. Now you previously just said it was the
21 -- the next day.

22 A Mm-hmm.

23 Q Do you recall testifying at the preliminary examination?

24 A Yes.

25 Q And do you recall testifying at the preliminary

1 examination that it was the very next day?

2 A Yes.

3 Q Okay. So when you say the very next day, the fire took
4 place on the -- the -- November 19th.

5 A Mm-hmm.

6 Q Is it your recollection or is it your understanding that
7 when you said the very next day, would that have been the
8 20th?

9 A That would be the next day, yes.

10 Q Okay. But as you're testifying here today, are you
11 absolutely certain it's the 20th, or could it have been
12 the 21st?

13 A It very well could have been the 21st. It was five years
14 ago.

15 Q Okay. But at the exam when you testified the exam was --

16 A I believe in the exam I -- I stated the next day, I
17 believe.

18 Q So the exam was scheduled -- was -- was held on February
19 15th, 2022 --

20 A Mm-hmm.

21 Q -- so is it -- I -- I understand 2022 is not 2019 --

22 A Mm-hmm.

23 Q -- and it's not 2024, but would your recollection been
24 better in 2022 than it is now, or do you think it's about
25 the same?

1 A I mean you could imply that it would be better, I mean --

2 Q Okay.

3 A -- it's three years later --

4 Q But your --

5 A -- two years later.

6 Q -- your testimony at the exam was you believed it was the

7 next day?

8 A I'm quite certain that my testimony was the next day, I

9 believe.

10 Q Okay.

11 So -- and when you filled -- or when you had him

12 come to the police department to sign this -- this form,

13 this consent form, did you fill it out prior to him coming

14 to sign it?

15 A Yes.

16 Q Do you recall when you filled out the form?

17 A I believe I filled it out that evening.

18 Q When you say that evening, would that be the evening of

19 the 19th, the -- the evening of the fire?

20 A Yes.

21 Q Okay.

22 MR. IDEMA: May I approach the witness?

23 THE COURT: Sure.

24 BY MR. IDEMA:

25 Q Deputy -- Deputy Chief, is -- I've handed you what's been

1 marked as People's Exhibit 1. Do you recognize that
2 exhibit?

3 A Yes.

4 Q And this is the consent to search form --

5 A Yes.

6 Q -- that we -- we were just talking about? And is this the
7 standard form that you use at your practice when you're
8 investigating fire -- cause and origin investigations?

9 A Yes.

10 Q Okay. And the -- your name is on the top of that form,
11 correct?

12 A Yes.

13 Q And the handwriting on the parts that are -- that had to
14 be filled in by hand, is that your handwriting?

15 A All of it.

16 Q All of it? Well, there's two sections, there's two parts,
17 there's -- under the signature part there is an ill --
18 illegible signature, is that fair to say? Or there's a
19 signature on that part?

20 A Yes.

21 Q Okay. When you say you filled out all of it, did you sign
22 that?

23 A No.

24 Q Was that your signature?

25 A No.

1 Q Okay. But you filled out the -- the section where -- you
2 know, print out the -- the address and phone number and
3 all that jazz?

4 A Yes.

5 Q Okay. And the -- I believe the top part actually has --
6 where it says I, and then the name of the person signing
7 that?

8 A Yes.

9 Q And is that Phil Neumeier -- or Philip Neumeier?

10 A Are you asking what it reads?

11 Q Yes, what does it read?

12 A I, Philip Neumeier.

13 Q Okay. And -- but the rest of that -- so you filled out
14 that -- that part that says Philip Neumeier, right, you --
15 you filled that out?

16 A I filled out everything with the exception of the
17 signature.

18 Q Everything but the -- exception of the signature?

19 A Correct.

20 Q Including the section where it says witness -- or witness,
21 and then you --

22 A That would have been filled out that evening.

23 Q That -- the evening --

24 A The evening that it was signed.

25 Q -- of the 19th? The evening it was signed?

1 A Correct.

2 Q Okay. So what part did you fill out on the 19th and what
3 part did you fill out on the 20th?

4 A The 19th would have been filled out, everything with the
5 exception of the witness section, because I didn't know
6 who the witness was going to be at that point.

7 Q Okay. So -- but Mr. Neumeier's address and -- and
8 everything else on that form you prefilled out on the 19th
9 --

10 A Yes.

11 Q -- including his address and phone number, but you left
12 the witness section blank until you knew was going to sign
13 as a witness?

14 A Yes.

15 Q Now is that typical you would have somebody sign as a
16 witness identifying that I personally saw this person sign
17 this document?

18 A Yes.

19 Q And do you know the purpose of that?

20 A Standard practice, I guess.

21 Q Standard practice to have somebody attest that they saw --
22 saw that person sign it?

23 A Yeah.

24 Q Okay. And with regards to Officer Leeds' area there where
25 it says witness --

1 A Mm-hmm.

2 Q -- there is initials and badge number that she wrote out,
3 right, she did that?

4 A Yes.

5 Q Okay. Now did she sign that or did she initial that and
6 put her badge number in your presence?

7 A Yes.

8 Q Did you witness her do that?

9 A Yes.

10 Q Okay. And same with regards to the signature of -- of the
11 other person, did that person sign that in your presence?

12 A Yes.

13 Q And is that signature supposed to be the signature of Mr.
14 Neumeier?

15 A Yes.

16 Q And you've already identified Mr. Neumeier here in court.
17 Did he -- did you witness him sign that document?

18 A Yes.

19 Q And it's your testimony you believe he signed it on the
20 20th?

21 A Or the 21st, yes.

22 Q Okay. It's possible the 21st, but also possible the --
23 the 20th?

24 A Yes.

25 Q More likely the 20th?

1 A Yes.

2 Q Okay.

3 Now, when you received that -- that -- so he --
4 but he did, in fact, sign that in your presence, right?

5 A Yes.

6 Q Okay. Did you have any -- well let me ask you this.

7 With regards to your cause and origin
8 investigation, did you go back on the 20th to continue?

9 A Yes.

10 Q Do you recall what time? Was it in the morning?

11 A Yeah, it was in the morning hours.

12 Q Okay. So -- and when you went back on the morning of the
13 20th, did anybody go back with you?

14 A Yes.

15 Q Who -- who went back with you?

16 A Officer Flavin and Detective Harpe.

17 Q Okay. And when Detective Harpe and Officer Flavin went
18 with you, did you guys at that point do a -- do another
19 evaluation of the exterior?

20 A Yes.

21 Q Did you do another evaluation of the interior?

22 A Yes.

23 Q And did you document both with photograph and taking
24 notes?

25 A Yes.

1 Q And was this a more thorough evaluation of the premises
2 than from the night before on the 19th?

3 A Yes.

4 Q Okay. And was there a decision made as -- well, first of
5 all, were you able to determine cause and origin on the
6 morning of the 20th?

7 A No.

8 Q Were you able to make any determinations as far as the
9 origins -- not actually the cause, but the origin of -- of
10 the fire on the 20th?

11 A There were two areas of potential origin.

12 Q Okay. And based off of your evaluation at that point, was
13 there a discussion amongst the three of you as to how to
14 continue with this investigation?

15 A Yes.

16 Q And what was that discussion -- what -- what -- what was
17 the nature of that discussion and what was decided?

18 A We discussed leaving the scene as was until the insurance
19 investigator was assigned to the incident so that we were
20 all looking at it from the same prospective.

21 Q Okay. And is that typical practice?

22 A I do that on nearly every fire.

23 Q And why is that?

24 A So there's no spoliation or anything of that nature so
25 that everybody's looking from a clean slate.

1 Q Okay.

2 So when you decided to stop the investigation at
3 that point and wait for the insurance. Had -- had you
4 already been contacted by an -- an insurance agent or a
5 representative by -- from the insurance?

6 A I believe so. I -- I don't recall.

7 Q Okay. Regardless, though, there was -- a decision was
8 made to stop, wait for the insurance --

9 A Wait for the insurance company, yes.

10 Q Was the residence secured at that point?

11 A Yes.

12 Q And how was it secured?

13 A The same means it was the night before, padlocked.

14 Q Okay. I'm sorry?

15 A By the same means it was the night before. There was the
16 investigatory board-up that was conducted by BELFOR
17 Property Restoration, and we placed the padlock back on
18 the door.

19 Q Okay. So at that point in time on the 20th, you had
20 control over the premises?

21 A Yes.

22 Q You had access to the premises?

23 A Yes.

24 Q Did the Hamburg Township PD have access to the premises or
25 was it solely you?

1 A Solely me.

2 Q And they -- they would have access, but only through you?

3 A Correct.

4 Q Was it -- the property ever turned over to the Defendant
5 on the 20th?

6 A No.

7 Q Okay. And why was that?

8 A For the purpose of the origin and cause investigation.

9 Q Because it wasn't completed yet?

10 A Correct.

11 Q Okay.

12 At some point in time were you contacted -- on
13 the -- on the 20th did you have contact with the insurance
14 investigator, Jeremy Berard?

15 A I believe so, yes.

16 Q And did you describe to him what you had done with regard
17 to your investigation at that point?

18 A Yes.

19 Q And was there a decision made to continue your part of the
20 investigation with him on scene?

21 A Yes.

22 Q But was this a joint investigation or two separate
23 investigations, but just conducted at the same time so
24 you're not spoiling the scene?

25 A It was not a joint investigation.

1 Q It was not a joint investigation?

2 A No.

3 Q Okay. And did you -- was there a point in time where you
4 came back to the scene after the 20th?

5 A Yes.

6 Q When did you come back to the scene?

7 A I believe the 21st.

8 Q The 21st. And when you came back to the scene on the
9 21st, who was with you; if you recall?

10 A I believe that was when Mr. Berard was there.

11 Q The insurance investigator --

12 A Yes.

13 Q -- Jeremy Berard?

14 A Yes.

15 Q Okay. And did your investigation continue past the 21st?

16 A Yes.

17 Q And more specifically did you come back -- so you were
18 there on the 21st, was there a decision made on cause and
19 origin determination on the 21st?

20 A No.

21 Q Why was that?

22 A There was discussion with Mr. Berard about the potential
23 need to bring in an electrical engineer to eliminate
24 electrical as a potential cause of the fire.

25 Q Okay. So did the investigation stop on the 21st?

1 A Yes.

2 Q And on the 21st did the -- did the scene get secured
3 again?

4 A Yes.

5 Q Same -- same --

6 A Same means.

7 Q -- process?

8 A Yep.

9 Q And you had the only access to that premises?

10 A Correct.

11 Q Had it been turned over to -- to the insurance at all?

12 A No.

13 Q So if Mr. Berard needed to gain access to -- to that
14 residence, he had to go through you first?

15 A Correct.

16 Q And had you turned over any access or any control of the
17 scene back to the defendant at this point?

18 A No.

19 Q Okay. Did you eventually come back to the premises on the
20 22nd or the 20 -- or -- or anytime thereafter?

21 A We went back to -- to -- what date, I don't recall.

22 Q Okay. At some point in time during the investigation did
23 you sit down with Investigator Berard and go over the
24 surveillance cameras?

25 A Yes.

1 Q And did you watch the -- the videos that was contained on
2 that -- the DVR for the surveillance cameras?

3 A Yes.

4 Q And was there evidence obtained from those -- from those
5 videos?

6 A Yes.

7 Q Or was there -- was there anything contained on those
8 videos that -- that had evidentiary value? I guess is
9 what I was asking.

10 A Yes.

11 Q Okay. More specifically, was there -- were there videos
12 that contained actions of the defendant leading up to the
13 fire?

14 A Yes.

15 Q Days leading up to the fire?

16 A Yes.

17 Q And also hours on the 19th leading up to the fire?

18 A Yes.

19 Q Okay. And based off of your viewing of those videos,
20 along with your previous part of this investigation, did
21 you eventually go back on the 27th of November?

22 A Yes.

23 Q And on the 27th of November did you go back to -- to the
24 residence with Jeremy Berard and the electrical engineer?

25 A Yes.

1 Q Was there anybody else that you recall being there with
2 you?

3 A Not that I recall.

4 Q Okay. And on the 27th when you were there with the
5 electrical engineer and you're with the insurance fire
6 investigator as well, was there any -- did you continue to
7 document the scene?

8 A Yes.

9 Q Continue to take photographs?

10 A Yes.

11 Q Continue to take notes?

12 A Yes.

13 Q And during your internal evaluation, did you go into the
14 basement?

15 A Yes.

16 Q And did you guys evaluate for cause and origin at that
17 point?

18 A Yes.

19 Q And during your evaluation of the two origin points, did
20 you find any -- any -- anything of note or any -- anything
21 of evidentiary value?

22 A Yes.

23 Q And can you describe where did you find it and what did
24 you find?

25 A We found a pan of oil, a roasting -- an aluminum roasting

1 pan of oil with a possible incendiary device inside of it,
2 placed underneath the case staircase.

3 Q And when you say a possible incendiary device, what --
4 what do you mean by incendiary?

5 A An ignition source --

6 Q An ignition source.

7 A -- that was within it.

8 Q And would this be indicative of -- or some sort of sign
9 that possibly the fire was not an accidentally set fire?

10 A It is a potential cause of fire, yes.

11 Q Potential cause of fire. And at that point in time when
12 that item was located or those items were located, what,
13 if anything, was decided between you and investigator
14 Berard?

15 A So the item was located. It was excavated around; photo
16 documentation was made. We removed the device from its
17 physical location and placed it on the pool table. There
18 was a multitude of different things on top of it and we
19 systematically removed the items on top. Once we got down
20 to the point of seeing the actual lamp and potential
21 ignition source, we seized everything and contacted
22 Detective Harpe.

23 Q And why did you contact Detective Harpe?

24 A Because it was a potential sign of a crime.

25 Q Okay. And what was the purpose of -- of reaching out to

1 Detective Harpe?

2 A Because he was the criminal side of the investigation.

3 Q Okay. Was there a -- a discussion made as far as
4 obtaining a search warrant --

5 A Yes.

6 Q -- or were you part of that discussion?

7 A Yes.

8 Q Okay. And was that Detective Harpe's responsibility at
9 that point?

10 A Yes.

11 Q And did your -- your part of the investigation, was it
12 suspended at that point in time until a search warrant
13 could be obtained?

14 A Yes.

15 Q Okay. And that would have been on November 27th when that
16 item -- those items were found?

17 A Yes.

18 Q Okay.

19 Prior to finding that item, had the premises
20 been turned over to the Defendant?

21 A No.

22 Q Why is that?

23 A Because it was still an ongoing investigation.

24 Q And at the time that those items were found, you reached
25 out to Detective Harpe; did you retain access and control

1 of the premises?

2 A Yes.

3 Q Was the premises secured?

4 A Yes.

5 Q Did you have -- did you retain sole access or was it
6 turned over to the Hamburg Township Police Department at
7 this point?

8 A I retained access.

9 Q Okay. Did you remain the -- the -- the point person, so
10 to speak, or the -- or as far as gaining access and
11 control of the premises?

12 A Yes.

13 Q And did -- was -- was that -- did you retain control of
14 the premises throughout the rest of this investigation
15 beyond the search warrant?

16 A For the entirety.

17 Q For the entirety. At what point did you cease having
18 control of the premises? In other words, what point in
19 time, if you recall, did you turn it back over to -- or
20 relinquish it back over to the Defendant?

21 A I don't recall.

22 Q Okay.

23 A After -- after the investigation concluded.

24 Q After the investigation concluded?

25 A Yes.

1 Q Okay. Thank you.

2 MR. IDEMA: I have nothing further at this time.

3 Oh, I do have just one -- one other question.

4 BY MR. IDEMA:

5 Q Prior to coming into court here today, did you have an
6 opportunity to review Officer Flavin's body camera?

7 A Yes.

8 Q And after reviewing the body camera, is there -- is there
9 anything about what's contained on the body camera that --
10 to the best of your knowledge, is it accurate or has it
11 been changed in any way, shape, or form that you're aware
12 of?

13 A No. There's a full dictation of the bodycam footage in my
14 report.

15 Q Okay. And was -- and as far as you're aware, your
16 dictation in your report, does it match what's on the --
17 on the body camera that you reviewed prior to coming to
18 court?

19 A Yes.

20 Q Okay. Thank you.

21 MR. IDEMA: I have nothing further.

22 THE COURT: Mr. Metz.

23 MR. METZ: Thank you, Judge.

24 CROSS-EXAMINATION

25 BY MR. METZ:

1 Q Let's start there.

2 You had an opportunity to review Officer
3 Flavin's body camera footage video, correct?

4 A Yes.

5 Q And that was from November 19th, 2019?

6 A Yes.

7 Q And do you recall him or you having conversation that we
8 really need to get a consent to search form?

9 A There was question from Officer Flavin about what about
10 consent to search.

11 Q Okay. So there was a discussion between you and Officer
12 Flavin, right?

13 A Correct.

14 Q Okay. And later in the evening when you had your second
15 contact with Mr. Neumeier. That was outside, correct?

16 A Yes.

17 Q And do you remember talking to him about a consent to
18 search form?

19 A Talking to whom?

20 Q Him, Phil Neumeier?

21 A No.

22 Q Okay. Do you remember seeing Mr. Neumeier on the video?

23 A Yes.

24 Q Okay. And do you recall there being a discussion of I
25 would like to meet with you tomorrow?

1 A I don't re -- I don't recall.

2 Q When did you review this bodycam footage?

3 A Two days ago.

4 Q Okay. So you don't recall saying to Mr. Neumeier I'd like
5 to meet with you tomorrow, and he said okay, but then he
6 said actually tomorrow I can't because I have childcare
7 issue?

8 A That does -- yes, I do recall that.

9 Q Okay. So you do recall that on November 19th he told you
10 I'm not going to be available on November 20th, right?

11 A Yes.

12 Q So therefore you probably met with him on November 21st,
13 if not the 20th, correct?

14 A That could be.

15 Q Okay. Well, I mean, do you have a recollection that he
16 said I'm not going to be able to meet with you the next
17 day because of my childcare issue, which you said you
18 remembered, but that he changed that and said never mind,
19 let's meet tomorrow?

20 A I don't recall.

21 Q Okay. Meeting with him on the 21st would be consistent
22 with him saying I can't tomorrow because of childcare
23 issues, correct?

24 A Yes.

25 Q Okay. And when you met with him on November 21st, do you

1 remember where that was at?

2 A Hamburg Township Police Department.

3 Q And was that in an interview room?

4 A Yes.

5 Q And you said the reason that was done is so that it could
6 be videotaped?

7 A Yes.

8 Q Do you know if it was videotaped?

9 A It was my understanding that it was.

10 Q Okay. And have you had a chance to see the videotape from
11 the 21st, or did you go back and look to see hey, was this
12 the 21st and what time?

13 A I requested the tapes from the police department, and they
14 were unable to access them.

15 Q Did they tell you that they were no longer available?

16 A Yes.

17 Q Okay. Do you recall who was in that room with you on what
18 we believe was the 21st?

19 A Myself, Mr. Neumeier, and Officer Leeds.

20 Q Okay. Nobody else?

21 A No.

22 Q Okay. Just the three of you?

23 A Yes.

24 Q Okay. On November 19th of '19, you went out to the
25 location on Winans Lake Road, correct?

1 A Yes.

2 Q And you helped extinguish the fire, correct?

3 A Yes.

4 Q And if I tell you that Detective Sergeant Harpe's report
5 indicates 3:38 p.m. on November 19th, do you have any
6 reason to doubt that?

7 A No.

8 Q Okay. It was still daylight, right?

9 A Yes.

10 Q Okay. So you went out there and it was quote/unquote,
11 within minutes that the fire was put out; is that correct?

12 A Yes.

13 Q Okay. Didn't take an hour or two hours to put it out. It
14 was really a quick extinguishing of the fire, correct?

15 A A quick knockdown, yes.

16 Q I'm sorry, quick --

17 A A quick knockdown.

18 Q Knockdown?

19 A Yes.

20 Q Okay. And you indicated that your investigation started
21 on 11/19/19, correct, that day?

22 A Yes.

23 Q Cause and origin, right?

24 A Yes.

25 Q Okay. And you indicated at least once, if not a couple

1 times, you spoke with Mr. Neumeier, correct?

2 A Yes.

3 Q And at some point -- well strike that.

4 When you first had contact with Mr. Neumeier,
5 you did not ask him for consent to -- to go into the house
6 and investigate, correct?

7 A Correct.

8 Q Okay. But it was on November 19th of 2019, that you did
9 see something that was remarkable on the interior of the
10 house, is that correct?

11 A Yes.

12 Q Okay. And that something was two potential and distinct
13 areas of origin; is that correct?

14 A Yes.

15 Q Okay. And that was the date of the fire, November 19th,
16 2019, correct?

17 A Yes.

18 Q Okay. So on that date, based on having been there, were
19 you able to determine there was two potential and distinct
20 areas of origin, and to you that meant something, correct?

21 A Yes.

22 Q What did it mean?

23 A That there was the potential for something suspicious.

24 Q Okay. So suspicious meaning criminal, right?

25 A No.

1 Q No. What would -- what would suspicious mean then?

2 A There was an uncommon burn pattern within that space.

3 Q Okay. So what was suspicious about that?

4 A It was suspicious in the means of how the fire started.

5 Q Okay. You're always looking to see how the fire started,
6 right? Is it --

7 A Yes.

8 Q -- is it always suspicious?

9 A No.

10 Q Okay. So when it becomes suspicious, it's not because you
11 believe that there was maybe an arson at that time?

12 A No.

13 Q Okay.

14 Now, you indicated that you did want -- on
15 November 19th, the date of the fire, 2019, you did want
16 and your preference would have been to get a consent to
17 search form that day, correct?

18 A Yes.

19 Q Okay. But you said you didn't have one?

20 A Correct.

21 Q When did you come about -- and you said the reason you
22 wanted that, right, is because it's standard practice to
23 do so when doing cause and origin to get a consent form if
24 you can, correct?

25 A Yes.

1 Q Okay. But you didn't on November 19th, correct?

2 A Correct.

3 Q Because you said you didn't have one. When was it that
4 you had one?

5 A When I returned to my office.

6 Q Okay. So that day?

7 A Yes.

8 Q Okay. So you -- you return to the office that day and
9 that's when you filled out the form?

10 A Yes.

11 Q Okay. And the form lists the address, correct?

12 A Yes.

13 Q And it talks about investigating a fire that occurred on
14 or about November 19th, 2019, at 15:39, so 3:39 p.m.,
15 correct?

16 A Yes.

17 Q So that gives us the time. We're going to assume that
18 that's accurate, correct?

19 A Yes.

20 Q Okay. And it actually then says the written consent to
21 search is given voluntarily without threat or promise at
22 blank a.m. or p.m. on this November day of 19, 2019.

23 We -- we can agree that it didn't happen on
24 November 19th, correct?

25 A Yes.

1 Q And there's reason to believe based on some of the
2 questions I just asked you that it probably was, in fact,
3 November 21st, correct?

4 A Could be.

5 Q Okay. And do you remember what time of the day it
6 occurred on November 21st?

7 A It was in the evening.

8 Q Okay. Because Officer Leeds worked evenings?

9 A She worked midnights, yes.

10 Q Okay. So that would be six p.m. or thereafter --

11 A That would be correct.

12 Q -- if it was November 21st, correct?

13 A Correct.

14 Q So your testimony to the Court is prior to Mr. Neumeier
15 signing this form, not on the 19th, but on a different
16 date after that, you did go into the residence on November
17 20th, right?

18 A Yes.

19 Q And again on November 21st?

20 A Yes.

21 Q And that was without the consent to search form?

22 A Yes.

23 Q And that was without any search warrant?

24 A Correct.

25 Q And at that point, the -- the fire you said was out in

1 minutes on the date of, there was no exigent
2 circumstances, correct?

3 A I don't understand your question.

4 Q There was no burning of the house, nobody was in peril
5 inside that house, correct?

6 A The -- the main body of the fire was out, but --

7 Q Right.

8 A -- the reason it took -- the reason we were on scene for
9 so long was secondary to the overhaul process that was
10 taking place.

11 Q Okay.

12 A We were on -- the fire was out in minutes, but we were on
13 scene for multiple hours.

14 Q For the investigation part?

15 A For the overhaul part.

16 Q Okay. And define what -- what's overhaul?

17 A It's the process of going through the occupancy and
18 ensuring that there is no hotspots or smoldering, which
19 there was, which is indicative on the bodycam footage when
20 Mr. Neumeier returned at the occupancy and it was
21 described to him that evening, while fire -- firefighters
22 were on scene still conducting overhaul after Mr. Neumeier
23 returned.

24 Q Okay. But any smoldering was completed on November 19th,
25 correct?

1 A Yes.

2 Q You wouldn't have left the residence if it was --

3 A That's correct.

4 Q -- if it was unsafe to do so, right?

5 A Yes.

6 Q Okay.

7 Do you recall within about a week to ten days
8 after -- well, let me -- let me ask you this --

9 MR. METZ: Strike that, Judge.

10 BY MR. METZ:

11 Q Did you have telephone and/or text contact with Mr.
12 Neumeier at all shortly after -- or at any time after this
13 fire?

14 A I believe.

15 Q I'm sorry?

16 A Yes.

17 Q Okay. And, in fact, some of it was texting?

18 A I believe so.

19 Q Okay. Even after that consent to search form was signed,
20 correct?

21 A I don't recall.

22 Q Okay. Do you recall a text wherein he on or about
23 November 29th said any consent is revoked to search?

24 A No.

25 Q You don't recall that at all?

1 A No.

2 Q Okay. The surveillance cameras that we've been talking
3 about, you guys didn't discover those on your own, Mr.
4 Neumeier told you about those, right?

5 A Correct.

6 Q Okay. And he actually told you they're in the house, go
7 ahead and get them, right?

8 A Correct.

9 Q Okay. And he asked for and requested his computer that
10 was left inside as well, correct?

11 A Yes.

12 Q And you guys retrieved that for him?

13 A Yes.

14 Q There was no verbal consent to search by Mr. Neumeier on
15 the night of November 19th, 2019, correct?

16 A Correct.

17 Q Okay. The only verbal consent to go into the house was to
18 retrieve the DVR and to retrieve his computer, right?

19 A Yes.

20 Q Beyond that there was nothing else where he said yes,
21 please go into my house and do what you got to do,
22 correct?

23 A Not that I recall.

24 Q Okay.

25 So it was your testimony that you went back to

1 that address the very next day, November 20th in the
2 morning, you said, right?

3 A Yes.

4 Q Before any search warrant and before any consent to search
5 form was signed?

6 A Yes.

7 Q And if, in fact, the consent to search form was signed on
8 the 21st because of childcare issues sometime at six p.m.
9 or thereafter --

10 MR. IDEMA: Your Honor, at this time I'm going
11 to object as to the phrasing of -- of the question.

12 First of all, I think he's testifying. Second
13 of all, he's misrepresenting or twisting the facts. It's
14 -- it wasn't -- and -- and we can cover this when -- when
15 Officer Flavin takes the stand, but it -- it wasn't a
16 discussion of well, we're going to get together on the
17 21st because I have childcare issues, it was the
18 discussion of trying to negotiate when he could meet
19 because he had childcare issues on the 20th, but there was
20 no discussion -- and I believe he testified that he
21 doesn't recall if there was any representation that we'll
22 just get together on the 21st. So for the defense counsel
23 to then phrase the question and then basically testify oh,
24 there was a decision made that -- that we're going to sign
25 this on the 12st, that's just a misrepresentation of the

1 facts.

2 THE COURT: The objection is overruled. I am
3 fully aware, Mr. Idema, that counsel does not testify in
4 my court, that the witness is the only person sworn, and
5 if the witness doesn't understand the question or needs
6 the question rephrased, he can tell defense counsel to
7 clarify the question or that's not an accurate statement.

8 MR. IDEMA: Thank you.

9 THE COURT: Go ahead, ask the question again.

10 BY MR. METZ:

11 Q So, if fact, the consent form -- consent to search form
12 wasn't signed until six p.m. or after at Hamburg Township
13 Police Department on November 21st, you had gone out there
14 on the 20th and 21st prior to that form being signed,
15 correct?

16 A Yes.

17 Q Okay. And as you indicated even after the 21st, the
18 investigation continued thereafter, right?

19 A Yes.

20 Q And regarding the pan of oil that you had talked about,
21 that actually was brought to your attention or Mr.
22 Berard's attention by Mr. Neumeier, right?

23 A To Mr. Berard, yes.

24 Q Okay. So the reason you guys even knew to look for that
25 in that particular area was because Mr. Neumeier told you

1 that, right?

2 A Yes.

3 Q Okay.

4 MR. METZ: May I have a second, Judge?

5 THE COURT: Sure.

6 BY MR. METZ:

7 Q In terms of your experience, where were you trained?

8 A Where was I trained?

9 MR. IDEMA: Your Honor, I'm going to object at
10 this point. How is that relevant to the issue of whether
11 or not the consent was given?

12 MR. METZ: Judge, I would agree, I'll withdraw.

13 THE COURT: Question's withdrawn.

14 MR. METZ: Thank you.

15 THE COURT: Any further questions?

16 MR. METZ: Nothing. Thank you.

17 THE COURT: Anything further, Mr. Idema?

18 MR. IDEMA: Yes, Your Honor, just briefly.

19 THE COURT: Go ahead.

20 REDIRECT EXAMINATION

21 BY MR. IDEMA:

22 Q Deputy Fire Chief, with regards to the discussion with the
23 Defendant about meeting with him the next day, so on -- on
24 the 19th you're discussing with him about getting in
25 contact with him on the 20th; is that fair to say?

1 A Yes.

2 Q Okay. Was there any time set or was there any -- any
3 agreement made as to when he would meet you on the 20th?

4 A Not that I recall.

5 Q Was there any discussion about hey, I can't meet you on
6 the 20th, let's meet on the 21st?

7 A Not that I recall.

8 Q Okay. So is it fair to say that there was no specific
9 timeframe established, just that you would reach out to
10 him on the 20th to -- to either meet with him or discuss
11 with him as far as the next steps?

12 A Yes.

13 Q Okay.

14 And with regards to -- defense counsel asked you
15 questions about well, the fire being out in minutes, and
16 you said that it took quite a while with regards to the
17 overhaul. Can you describe why did it take so long with
18 regards to the overhaul?

19 A As I testified the first time, there was an extension
20 through the cold air return that extended all the way up
21 to the third floor of the occupancy, so it took time.

22 Q Okay. So kind of explain this to me like I'm a two-year-
23 old, okay.

24 What do you mean by -- by cold air return?

25 A So a cold air return within the occupancy for the HVAC

1 system was a straight line of -- of path for the fire to
2 extend from the basement up to the third floor, so in
3 doing so, it created multiple hotspots on each individual
4 floor, so it took time for us to track all these down,
5 open up the space, ensure that the -- the fire was
6 completely out.

7 Q And did your department use like thermal imaging and
8 whatnot --

9 A Yes.

10 Q -- to determine -- so aside from where the fire -- the
11 main part of the fire, so to speak, was extinguished, were
12 you guys trying to determine, make sure that there were no
13 other hotspots or no other fires contained within the
14 walls of the residence?

15 A Yes.

16 Q And that took a while?

17 A Yes.

18 Q Okay. Thank you.

19 MR. IDEMA: I have nothing further.

20 THE COURT: Anything, Mr. Metz?

21 MR. METZ: Nothing. Thank you.

22 THE COURT: Is this witness also under subpoena,
23 Mr. Idema?

24 MR. IDEMA: Yes, Your Honor.

25 THE COURT: Any need for him today?

1 MR. IDEMA: No, Your Honor. He may be excused.
2 THE COURT: You're all set, sir.
3 THE WITNESS: Thank you.
4 THE COURT: Thank you for coming in. You're
5 excused from your subpoena.
6 THE WITNESS: Thank you.
7 (At 3:15 p.m., witness excused)
8 MR. IDEMA: Thank you, Your Honor. At this time
9 the People like to call Jeremy Berard.
10 THE COURT: Good afternoon, sir. I'm going to
11 have you remain standing, raise your right and take an
12 oath.
13 THE CLERK: You do solemnly swear or affirm that
14 the testimony you shall give in the matter before the
15 Court will be the truth, the whole truth, and nothing but
16 the truth?
17 JEREMY BERARD: I do.
18 THE CLERK: Thank you.
19 (At 3:16 p.m., witness sworn)
20 THE COURT: You can have a seat, sir.
21 THE WITNESS: Thank you.
22 THE COURT: Mr. Berard, please state your full
23 legal name for the record and just spell the last.
24 THE WITNESS: Jeremy Robert Berard, B-e-r-a-r-d.
25 THE COURT: Mr. Berard, have you ever testified

1 in court before?

2 THE WITNESS: I have.

3 THE COURT: The microphone ahead of you in this
4 courtroom is lit up in red. It does not amplify, it only
5 records. It seems like your voice is loud enough so we
6 can properly record these proceedings. Mr. Idema will be
7 asking you questions on direct examination, Mr. Metz,
8 defense counsel to my left will be answer -- may ask you
9 questions on cross-examination, please listen to their
10 questions, do not answer the questions until they complete
11 their -- their full sentences, we can't record two voices
12 at the same time. You understand?

13 THE WITNESS: Understood.

14 THE COURT: We only understand verbal answers to
15 questions, head nods, head shakes do not suffice. If
16 there's an objection being lodged by either attorney,
17 please let the Court resolve the objection before you
18 continue to answer that question.

19 You understand all those instructions?

20 THE WITNESS: I understand.

21 THE COURT: Do you have any questions for me?

22 THE WITNESS: No, sir.

23 THE COURT: Go ahead, Mr. Idema.

24 MR. IDEMA: Thank you.

25 JEREMY BERARD

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called as a witness, testified as follows:

DIRECT EXAMINATION

BY MR. IDEMA:

Q Mr. Berard, can you briefly describe to the Court how is it you're currently employed, how long have you been employed in such capacity, and what are your job functions?

A I currently am employed at Herndon & Associates. I'm a structure fire investigator and structure damage investigator, and this December will be 18 years.

Q Okay. And can you just briefly describe what does a fire investigator do?

A In my role, we are contacted mainly by insurance companies when a fire does happen to -- we have two divisions in our company, vehicles and structures. Myself is mainly structures, we'll get contacted when a claim is made and they want somebody to take a look at it. We then go out and conduct an origin and cause investigation, sometimes involving multiple disciplines, as in metallurgy or electrical engineers to be brought in, but we oversee the investigation and -- to determine where the fire started and how it started, if we can.

Q Okay. And are -- are you in any way affiliated with law enforcement?

A I am not.

1 Q Okay. Are you in any way affiliated with fire marshals or
2 more specifically in this particular case, Hamburg
3 Township Fire Department?

4 A I am not. I'm belong to an organization -- I'm a past
5 president of the Michigan Chapter -- the International
6 Association of Arson Investigators. We do -- it's a
7 public organization that we do train other -- other fire
8 investigators coming into it, we provide training for
9 them, I've been a part of that --

10 Q Okay.

11 A -- since I've got -- so I can't say some of them aren't on
12 the same organization or members of it --

13 Q Okay.

14 A -- but that would be really the --

15 Q As far as your capacity as -- as a fire structural
16 investigator, more specifically with regards to this
17 particular case, were you working as an agent of the --
18 either the Hamburg Township Police Department or Hamburg
19 Township Fire Department?

20 A I was not.

21 Q Okay. As a matter of fact, were you contacted by either
22 one of them or were you contacted by an insurance company?

23 A I was contacted by an insurance company.

24 Q Okay. Do you recall which insurance company?

25 A Amica Insurance.

1 Q Amica Insurance. And did they provide you with the -- the
2 essentials as far as the location of the fire?

3 A They -- basically what took place is the -- the claim was
4 made to Amica, Amica reached out to our offices for our
5 services. I just happened to be next up on the -- the
6 fire list of who's available --

7 Q Okay.

8 A -- and then they provided us the insured's contact
9 information, the basic information, that it's Hamburg, and
10 then from there we start the investigation.

11 Q Okay.

12 And with regards to the insurance or -- or maybe
13 the homeowner, were you provided with -- with his contact
14 information; did you reach out to him?

15 A Yes. Yes.

16 Q Okay. And were -- were you provided with the name of
17 Philip Neumeier?

18 A Correct.

19 Q Okay. And during the course of your investigation did you
20 have any face-to-face time with Mr. Neumeier?

21 A I never face-to-face met Mr. Neumeier.

22 Q Okay.

23 A I only did telephone. Standard procedure. We would
24 contact -- get consent or get -- you know, are you
25 available to meet there, what's going on, I need your

1 permission to go onto the site. So that was the 21st.
2 And then as part of it, how we work is I would like to
3 take a look at the site, just a quick view, and then talk
4 to them about the site and do an interview with them. So
5 it's more streamlined interview as far as, you know, what
6 room is the fire in, what's there, what appliances, what
7 items, and this investigation followed that same track.

8 Q Okay. Now you mentioned consent. What -- as -- as a
9 investigator in the capacity that you were in, what --
10 what -- why was it necessary -- why did you seek consent?

11 A Our consent is that, one, I need permission to be on their
12 property to conduct my investigation, and how we go
13 through it is it's also for the purposes -- one of the
14 main reasons insurance companies have us is for
15 subrogation. If there is an appliance or something that
16 fails, they can take the insured's shoes or take their
17 place and pursue litigation against say a manufacturer or
18 somebody that was doing work on the house, and so I need
19 to be able to have permission to go on to the site and
20 preserve that evidence if we're going to do something
21 further. It's just for the purpose of the investigation,
22 their permission to go onto it.

23 Q Okay.

24 And do you recall when were you brought on to
25 this -- or when were you contacted by Amica to -- to do

1 your part -- your -- your investigation?

2 A I believe it came into the office on the 20th of November
3 of 2019, and it -- it just was one -- they come -- they
4 load to our phones. So we get a text message and an email
5 just showing new file number and that it's like okay, talk
6 to my boss, say I'll handle it, and then it was a reach
7 out to Fire Marshal Zernick, just to say hey, what is
8 going on, what's the situation. I think we made
9 arrangements at that point for to meet a day or two later,
10 and then would reach out to Mr. Neumeier and get consent
11 from him.

12 Q Okay. Now you said that -- that took place on the 21st
13 when you reached out to Mr. Neumeier?

14 A Yes, Mr. Neumeier was on the 21st, Mr. Zernick, I think
15 was like almost five o'clock on the 20th.

16 Q Okay. So you spoke to the fire marshal on the 20th,
17 reached out to Mr. Neumeier on the 21st?

18 A Correct.

19 Q And did Mr. Neumeier provide you -- so was this over the
20 phone?

21 A That is correct.

22 Q And did he provide you with verbal consent to go onto the
23 premises and to conduct your investigation?

24 A Yes, he did.

25 Q Okay. Is that all you needed from him was the verbal

1 consent?

2 A At that point, yes. It was -- there was hey, I'm trying
3 to figure out what's going on, the fire department has it
4 locked down, can I go take a look at your site, yeah, we
5 eventually got formal consent I believe in January --

6 Q Okay.

7 A -- of 2020 before we went back to the site.

8 Q Okay. And just so we're clear, when you say formal
9 consent --

10 A Or written consent.

11 Q Written consent --

12 A I apologize.

13 Q -- from him in January. But specifically on November 21st
14 of 2019, he gave you verbal consent?

15 A That is correct.

16 Q Okay. And kind of fast forward with regards to your
17 investigation.

18 Do you recall how many times you went to the
19 scene to conduct your investigation?

20 A Would have been the 22nd of November for a short period in
21 the morning, then the 27th of November, and then I believe
22 we completed it January 20th of 2020.

23 Q Okay. Was there a point in time more specifically on the
24 27th -- well, first of all, let me ask you.

25 When you went there on the 22nd, and then you

1 said again on the -- on the 27th, were you there with
2 anyone else?

3 A The 22nd, I met with Fire Marshal Zernick, I believe
4 Detective Harpe, and I'm not sure who else was part of
5 their investigation team. But we met, they had the
6 property locked down --

7 Q Okay.

8 A -- I was allowed to document, look around, come up with a
9 game plan of what was going on because -- and then later
10 that afternoon, I was able to interview Mr. Neumeier over
11 the phone with -- we took -- I took a couple statements
12 from him. And then on the 27th when I went back, I
13 brought electrical engineer, Jay Herrick. I met with Fire
14 Marshal Zernick there. He still had control of the scene.
15 I'm not sure if he had somebody else there. And then Mr.
16 Herrick had a helper, it was an assistant photographer.

17 Q Okay. Now with regards to the 27th, did something happen
18 or was there a discovery made on that day that caused some
19 concern to either you or the other investigators?

20 A Yes.

21 Q And what -- what -- what was discovered?

22 A Well, to -- on the 22nd -- we discovered an incendiary
23 device on the -- on the 27th. On the 22nd, when I had
24 interviewed Mr. Neumeier, he had presented or let me know
25 that there was a pan of oil in the basement, a baking pan

1 of oil, and he sent me a photograph of it. This was
2 information that was new to Jordan and to the -- to Fire
3 Marshal Zernick and Hamburg, and I let him know hey, he is
4 saying that there was pan of oil down there under the
5 stairs, are you aware of this, was like, well, we've got
6 to see if is that involved or how is that involved.

7 Q Okay.

8 A So that area under the stairs was undisturbed. They had
9 actually piled debris from the other portion of the
10 basement when they did their excavation onto that area,
11 and then as we proceeded through the morning of the 27th
12 digging, we found electrical -- basically found that there
13 was a -- a pedestal floor lamp that was on its side, that
14 was -- had a halogen bulb that was wrapped in a -- what
15 later termed to be an oil change rag or a rag -- a pressed
16 composite rag into the oil pan on its side, so we had a
17 wrapped rag around the -- the bulb that was laying in the
18 oil pan and as we delayered that's what we found, and it
19 was in a position that was undisturbed, that's how it was
20 at the time of the fire, and at that point I -- we -- we
21 had moved that item to get a better look at -- to the pool
22 table, which was in the center of the room, and that's
23 where we stopped, and I was like, I don't know what your
24 consent is it or what is going on, I think this is an
25 incendiary device, I need to talk to my client about this,

1 you guys need to figure out what you're going to do as far
2 as your consent, if you need a search warrant or not, a
3 criminal search warrant.

4 Q Now, with regards to you used the term incendiary device,
5 what -- what does that mean?

6 A It's -- it's -- the most generic term would be -- or the
7 most generic item that becomes is -- everybody thinks a
8 Molotov cocktail. It's a device that's made to start a
9 fire. But we -- you can use other devices. You can alter
10 electronics and coffee makers, that's been done over the
11 years, you can set up fuel sources next to space heaters
12 in a manner that would cause them to be ignited. This was
13 done in a manner that we have a -- a large wattage bulb,
14 halogen, which creates heat, wrapped around a cloth in a
15 pan of oil acting as this is going to be the incendiary
16 device that starts this fire almost as a time delay, and
17 then what we also -- when we processed there was a fuel
18 stock around it, in that they had fuel packages in a
19 mattress on its side blocking it into the room, and we
20 also had plywood and other materials that were placed in
21 that area.

22 Q So at this point in time with the discovery of -- of all
23 this, prior -- prior to that discovery had there been a
24 dis -- or a decision made, or could you -- a decision made
25 with regards to cause and origin?

1 A We were -- up until that point and even after that point,
2 we were still at an undetermined fire.

3 Q Okay.

4 A Because we had -- the -- the fire scene was not completed
5 from my end until January 20th, where -- when we -- when
6 myself and Engineer Herrick went back and we completed the
7 scene, but we had beginning evidence on the 27th that
8 there was an incendiary event. There was evidence that
9 Mr. Neumeier had left the house early -- or shortly before
10 the fire, but it didn't necessarily indicate that there
11 was an incendiary event going on.

12 Q And in -- in that evidence you just -- you just spoke of
13 him leaving, was that contained on the video surveillance
14 cameras?

15 A The video and also, I believe, my interview with Mr.
16 Neumeier.

17 Q Okay. So at that point in time -- so with the discovery
18 of the potential incendiary event, for lack of better
19 terminology, did that -- was that basically a gamechanger,
20 or is that -- did that change the -- the complexion of
21 what you were looking at?

22 A It changed. It -- it made it that we need to make sure
23 all the I's are dotted, T's are crossed. I mean this is -
24 - this is a device, this is something that's intentionally
25 set up. Is there somebody else involved in this, what is

1 going on. I mean --

2 Q Okay.

3 A -- it -- it's a criminal event at that point.

4 Q So -- and at that point then was the decision made to just
5 suspend the investigation at that point, get a search
6 warrant?

7 A I believe they actually called Mr. Harpe in. I don't bel
8 -- he was not there to begin with, and I think it was
9 Thanksgiving weekend or close to that I believe he came
10 in, and that's where it was left with me.

11 Q Okay.

12 A They were going to take care of getting the search warrant
13 and doing what they needed to do to continue their end of
14 it.

15 Q But you did continue your part of -- of your investigation
16 beyond that?

17 A Correct.

18 Q And then --

19 A We then -- I'm sorry.

20 Q That continued through -- through January?

21 A That's correct.

22 Q Okay.

23 A We set up -- Amika was made aware of it, their special
24 investigation portion was made aware of it, we made, you
25 know, made -- alerted to what was going on --

1 Q Okay.

2 A -- and then they followed up and got consent from Mr.
3 Neumeier to complete the investigation, and that's when we
4 went back.

5 Q Okay. At any point in time during your investigation, was
6 -- was the verbal consent conveyed to you or -- or -- or --
7 - that it was revoked?

8 A Not that I'm aware of.

9 Q Okay.

10 A Mr. Neumeier was very forthcoming. I've never had
11 somebody text me a picture of a pan of oil. He answered
12 all my questions in my interviews with him.

13 Q And during the course of the investigation, also with --
14 with your experience as -- as a fire investigator, is
15 there any type of statutory authority that requires a
16 police agency to reach out and say -- or -- or requires an
17 insurance to then send information to the police agency?

18 A I'm --

19 Q Yeah, that -- I worded that wrong. Let me rephrase that.

20 Are you aware of any stat -- Michigan statutory
21 authority that requires a police agency if they want
22 information from the insurance to submit a -- a particular
23 form to obtain that information?

24 A There -- we've always been taught -- I'm not exactly
25 certain to what case law, but we know as -- it used to be,

1 it's BFS64s, it's any law enforcement, that's the form
2 that can be submitted to an insurance company for all
3 their information regards to their -- their findings in
4 it.

5 Q And --

6 A So that's quite common.

7 Q It's quite common?

8 A Yes.

9 Q And is -- is it your understanding that once that form is
10 submitted does the insurance company under Michigan law
11 have to turn that information over?

12 A Generally, yes. I've also had been directly subpoenaed as
13 an investigator for my investigation and I've had to turn
14 that over in different proceedings, where they don't even
15 go the insurance company, so --

16 Q Do you know if that was done in this case?

17 A I don't -- I did not receive -- I believe it came through
18 the insurance company, but I did receive subpoenas on this
19 one, I can't say which way.

20 Q Okay. Thank you.

21 MR. IDEMA: I have nothing further.

22 THE COURT: Mr. Metz?

23 MR. METZ: Thank you, Judge.

24 CROSS-EXAMINATION

25 BY MR. METZ:

1 Q Good afternoon, Mr. Berard.

2 When was it was the first time that you went to

3 the Winans Lake Road address?

4 A The 22nd --

5 Q Okay.

6 A -- of November.

7 Q And do you recall with whom?

8 A Myself, I believe Fire Marshal Zernick --

9 Q Okay.

10 A -- and Detective Harpe, I believe I met there as well.

11 Q Okay.

12 A Yeah.

13 Q So you --

14 A And there might have been another person there, I'm not

15 certain. It wasn't part of my investigation party or

16 anything.

17 Q Okay. You were the only person from your party --

18 A Correct.

19 Q -- and then you believe it was Zernick and Harpe and maybe

20 somebody else?

21 A Maybe somebody else, yes.

22 Q Okay. And when you arrived to the house, was the house

23 secure?

24 A Yes, it was.

25 Q Were there any areas that you noticed were un-boarded?

1 A No, I did not.

2 Q Not the door by the garage?

3 A No.

4 Q Okay.

5 A It was locked when I got there.

6 Q Okay. At --

7 A They unlocked it when we --

8 Q At some point had Hamburg Township police or fire relayed
9 to you that they believe Mr. Neumeier was a suspect in
10 this fire?

11 A They didn't eliminate anybody as a suspect. You were
12 dealing with an undetermined fire. They were -- arson is
13 always on the table of any fire until you go through it.
14 It was an undetermined fire at that point. They -- they
15 relayed to me that it was quickly after he had left, but
16 they didn't -- they didn't know what happened exactly.

17 Q When are you talking about, November 22nd?

18 A Yeah, 22nd, or the -- the 20th when I talked to Jordan
19 briefly the night -- what was going on --

20 Q Okay. So -- so let me ask you then, at any point did they
21 tell you they believed he was a suspect?

22 A I don't recall.

23 Q Before you entered on the 22nd, did you check to see who
24 else had been in beforehand?

25 A I was informed that Fire Marshal Zernick was, I believe

1 Officer Flavin was, I'm not certain who else been in, that
2 was what was relayed to me who had been there.

3 Q Okay. And do you know if in talking to them they followed
4 an FPA921 for their investigation?

5 A To the -- to speaking to them, as best as I can -- it
6 appeared to be that they did, yes.

7 Q Okay, but you -- you don't know for sure?

8 A I don't know for sure.

9 Q Okay. Now on November 21st, Phil gave you consent to go
10 in, right?

11 A Mr. Neumeier?

12 Q Yes, Phil Neumeier?

13 A Yes, he gave me --

14 Q Okay.

15 A -- consent.

16 Q And that was you specifically; is that correct?

17 A That is correct.

18 Q Okay. Did he -- at the time was he asked or give anybody
19 else permission through you?

20 A Not through me.

21 Q Okay. And you said it was during the course of talking to
22 Mr. Neumeier that he himself had told you that based on
23 when the fire started, he had recently just left the
24 house; is that correct?

25 A That is correct.

1 Q He offered that information to you?

2 A Or I asked him about it, yes, he --

3 Q And he told you, right?

4 A Yes, he did.

5 Q Okay. And he offered you information about this pan of
6 oil that was in the house, that -- that he offered that;
7 is that correct?

8 A That is correct.

9 Q And you said he even went so far and sent you a picture of
10 the pan of oil; is that correct?

11 A That is correct.

12 Q Okay. You said he was very forthcoming?

13 A Yes, he was.

14 Q Cooperative with your investigation?

15 A At -- at that point, yes --

16 Q Okay.

17 A -- I had no issues with it.

18 Q And then did -- have you have tested the oil, the lamp, or
19 the cloth?

20 A I'm sorry?

21 Q The oil, lamp, and cloth that you talked about, did you
22 have that tested at all?

23 MR. IDEMA: Your Honor, at this time I'm going
24 to object. How is that relevant to the issue of consent?

25 MR. METZ: He -- he -- he opened the door,

1 Judge, there were a lot of questions asked in terms of
2 consent that I didn't think we needed to go to, but since
3 he asked it, I'm following up on it.

4 THE COURT: The objection is sustained. This is
5 a -- not a probable cause conference, Mr. Metz, this is a
6 --

7 MR. METZ: Okay, Judge.

8 THE COURT: -- evidentiary hearing.
9 You do not have to answer that question, sir.

10 MR. METZ: Fair enough.

11 If I could have a minute, Judge?

12 THE COURT: Sure.

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

14 THE COURT: Any additional questions, Mr. Idema?

15 MR. IDEMA: No, Your Honor. Thank you.

16 THE COURT: Is Mr. Berard under subpoena?

17 MR. IDEMA: He is, Your Honor. At this time I
18 would ask he be excused.

19 THE COURT: Thank you, Mr. Berard, for coming in
20 to testify. You're all set with your subpoena today.

21 THE WITNESS: Okay, very good. Thank you much.

22 (At 3:38 p.m., witness excused)

23 THE COURT: How many more witnesses do you have,
24 Mr. Idema?

25 MR. IDEMA: Your Honor, I have Officer Flavin

1 and then Detective Sergeant Gary Harpe. Your Honor, with
2 Mr. Flavin, my only intent with him is to play his body
3 camera video. The video itself is about 36 minutes. If
4 the Court would like to take the testimony of Detective
5 Sergeant Harpe and then watch the video, that might be a
6 more prudent way to go or --

7 THE COURT: We've been on the record for about
8 two hours today. I just want to know how long we're going
9 to go. I want to take a break myself. So we're going to
10 take about a ten minute break, we'll come back and we'll
11 see how far we get.

12 MR. IDEMA: Okay. Thank you.

13 THE CLERK: All rise.

14 (At 3:38 p.m., court recessed)

15 (At 3:56 p.m., court resumed)

16 THE COURT: We're back on the record on the
17 People versus Philip Neumeier. Case number 22-027188-FH.

18 We're continuing on two motions before the
19 Court, Defendant's motion to suppress evidence,
20 Defendant's motion to quash a search warrant.

21 It's my understanding we have two witnesses
22 remaining; is that correct, Mr. Idema?

23 MR. IDEMA: Yes, Your Honor.

24 THE COURT: Your next witness?

25 MR. IDEMA: Thank you, Your Honor. Your Honor,

1 at this time the People would like to call Officer Spencer
2 Flavin.

3 THE COURT: Good afternoon, officer. I'm going
4 to have you remain standing, raise your right hand and
5 take an oath.

6 THE CLERK: You do solemnly swear or affirm that
7 the testimony you shall give in the matter before the
8 Court will be the truth, the whole truth, and nothing but
9 the truth?

10 SPENCER FLAVIN: I do.

11 (At 3:56 p.m., witness sworn)

12 THE COURT: You can have a seat, sir.

13 Officer Flavin, please state your full legal
14 name for the record and just spell the last.

15 THE WITNESS: Spencer Flavin, F-l-a-v-i-n.

16 Officer, have you testified in court before?

17 THE WITNESS: Yes.

18 THE COURT: The microphone in front of you is
19 lit up in red. It only records, it does not amplify. We
20 want to make sure your voice can be heard for appellate
21 purposes. Also, we do not understand head nods or head
22 shakes, only verbal will suffice. If there's an objection
23 being lodged by either attorney, please do not continue to
24 answer the question, please let the court resolve the
25 objection before you continue to answer.

1 We only can record one voice at a time. Please
2 let each attorney finish their question before you answer,
3 even if you anticipate what their question is going to be.

4 Do you have any questions for me, sir?

5 THE WITNESS: No, Your Honor.

6 THE COURT: Mr. Idema, it's now five minutes to
7 4:00, this Court will not go past 5:00 today. If we can't
8 conclude the testimony of this witness and the next
9 witness, we will adjourn to another date and time.

10 MR. IDEMA: Okay.

11 THE COURT: Go ahead, Mr. Idema.

12 MR. IDEMA: Thank you, Your Honor.

13 Your Honor, just as a housekeeping matter, the
14 next -- with this witness I plan on using People's
15 proposed Exhibit 2, which is a flash drive that contains
16 this officer's body camera from November 19th, 2019. With
17 discussion with defense counsel, it's my understanding we
18 have a stipulation to People's proposed exhibit to be
19 admitted for the purposes of this hearing.

20 THE COURT: Is that correct, Mr. Metz?

21 MR. METZ: It is, Judge.

22 THE COURT: Let the record reflect the parties
23 have stipulated to the People's proposed Exhibit 2, it
24 shall be known as People's Exhibit 2, which shall be
25 admitted, which is the officer's bodycam footage; is that

1 correct?

2 MR. IDEMA: Yes, Your Honor.

3 THE COURT: All right.

4 (At 3:58 p.m., PX-2 was received)

5 MR. IDEMA: Thank you.

6 SPENCER FLAVIN

7 called as a witness, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. IDEMA:

10 Q Officer Flavin, just -- just as -- kind of housekeeping
11 matter, for the record, can you please describe how is it
12 you're employed, how long you been employed in such
13 capacity, and what are your job functions?

14 A I'm a police officer with Hamburg Township Police
15 Department. I've been employed there a little over 11
16 years, and -- did that cover all your questions?

17 Q Okay. And were you working in such capacity back on
18 November 19th, 2019?

19 A Yes, I was.

20 Q And were called to help assist with a fire situation at
21 the -- at the -- the Winans Lake Road --

22 A Yes.

23 Q -- more specific 27 -- or 7809 Winans Lake Road?

24 A Yes, I was.

25 Q And were you asked to -- called to that scene by -- to

1 assist with Fire Marshal, not it's Deputy -- or Deputy
2 Fire Chief Jordan Zernick?

3 A Yes, that's correct.

4 Q Okay. And when you arrived on scene, did you have -- were
5 you equipped with a body camera?

6 A I was.

7 Q And was your body camera operating?

8 A Yes.

9 Q And prior to coming to court today, did you have a chance
10 to review that body camera, more specifically did you come
11 to my office and review the body camera?

12 A I did.

13 Q And to the best of your recollection, has that body camera
14 been altered or changed in any way, shape, or form?

15 A No.

16 Q Okay.

17 MR. IDEMA: With that, Your Honor, at this time
18 I would ask to play it.

19 THE COURT: We'll play the People's Exhibit
20 Number 2.

21 (At 4:01 p.m., videorecording played on the
22 record)

23 MR. IDEMA: Your Honor, there's still about five
24 minutes left, that's pretty much the extent, there is a
25 little bit more audio, but that's the extent of -- of what

1 -- at the least the intended purpose for playing the
2 video.

3 THE COURT: I'm satisfied. And let the record
4 to reflect I do have another monitor here to my right,
5 which is clearer than the monitor to my left. I know we
6 had that same issue at another jury trial we had where the
7 monitor is clearer than that -- that picture on the wall.

8 MR. IDEMA: Okay. So for the record, I'm
9 stopping it at five minutes and sixteen seconds left.

10 (At 4:35 p.m., videorecording stopped)

11 MR. IDEMA: And with that, Your Honor, I have no
12 further questions of this witness.

13 THE COURT: Mr. Metz, any questions for this
14 witness?

15 MR. METZ: Briefly, Judge. Thank you.

16 CROSS-EXAMINATION

17 BY MR. METZ:

18 Q Officer Flavin, so when you were called to the scene that
19 was on the day of the fire, November 19th, 2019, correct?

20 A Yes.

21 Q And do you recall by whom?

22 A Fire Chief Miller contacted me.

23 Q Okay. And you weren't on duty working at the Hamburg
24 Township Police Department at that time, you were actually
25 at home or somewhere else, right?

1 A Correct, I was not --

2 Q You were off shift, right?

3 A -- I was not on duty when he called.

4 Q Okay. And what was the purpose for getting called out

5 there at that point? The fire had been extinguished and

6 suppressed; is that correct? The fire -- when you got

7 there the fire was out, right?

8 A When I got there, they were still conducting activities in

9 the fire ground.

10 Q Okay. When did that end, the overhaul?

11 A I don't -- I don't have that time for you.

12 Q Did it end while you were there that night?

13 A It was still going on during that video.

14 Q Okay. Did it end before you left that night?

15 A Yes.

16 Q Okay.

17 A I didn't leave until the building -- the residence was

18 secured.

19 Q Okay. And secured means no further fire possibility of

20 chance, correct? Everything was put out?

21 A When I say secured, I mean the property restoration

22 company secured the house so no one could tamper with it.

23 Q Okay. And that wouldn't have been done if everything

24 wouldn't have been snuffed out, right? You're not going

25 to secure and board up a house if there is still a chance

1 for a fire inside, right?

2 A Correct.

3 Q Okay. Now during your contact with Phil Neumeier -- well,
4 strike that.

5 You were there for purposes of cause and origin
6 and an investigation, correct?

7 A Correct.

8 Q Okay. So when you went there that was -- that was the
9 case on November 19th of 2019, correct?

10 A Yes.

11 Q Okay. In your contact with Phil -- Phil Neumeier, he
12 asked you about or inquired about a computer either to you
13 or to Mr. Zernick, it's tough to tell on the bodycam, but
14 on the bodycam, there's a suggestion about a computer with
15 maybe four monitors, right?

16 A Yes.

17 Q Okay. And it was asked to go get that, right?

18 A That was my understanding.

19 Q You went and got it, right? Somebody went and got it?

20 A I did not go and get it.

21 Q Okay. Did you see who got it?

22 A Yes, the video just showed Fire Marshal Zernick went and
23 got it.

24 Q Okay. So -- and then there was discussion brought up by
25 Mr. Neumeier, correct, that there was a DVR surveillance

1 system that could be had?

2 A Yes, he brought that up.

3 Q He brought it up, nobody asked him about it, right? He
4 was the one who suggested, hey, I've got video, right?

5 A Correct.

6 Q Okay. And that was -- that DVR system was seized, if you
7 will, as well, right?

8 A He'd offered us to take it and look at it.

9 Q Sure.

10 A And told us where it was located, correct.

11 Q Right. So he told you about the computer and he told you
12 about the DVR system, and that's what was discussed, there
13 was no verbal consent to just search the house on the
14 evening of November 19th, correct?

15 A Not that I recall.

16 Q Okay. Any verbal consent was limited to those two things,
17 correct?

18 A I remember him giving consent for those things.

19 Q Yes. Okay. And there was no written consent for
20 anything, correct?

21 A Correct.

22 Q Okay. And, actually, you heard it on the video, I think,
23 there was discussion with you and Mr. Zernick regarding
24 getting a consent form, correct?

25 A Correct, I brought it up to him.

1 Q Okay. But that wasn't done that night?

2 A Correct.

3 Q Okay. And to your knowledge, there was no search warrant
4 that night either, correct?

5 A Correct.

6 Q Okay. And you had a chance to watch, I believe it was
7 indicated in the assistant prosecutor's office, but also
8 again today, was there, in fact, discussion by Mr.
9 Neumeier about having childcare issues the day after,
10 November 20th?

11 A He told Fire Marshal Zernick that he had his son, I
12 believe it was, the next day, and that had some effect on
13 what time he wanted to meet with Fire Marshal Zernick the
14 next day.

15 Q Okay. And when you -- when -- when Mr. Neumeier said that
16 who was with you law office person -- law enforcement
17 personnel wise, was Chief Zernick with you -- Fire Marshal
18 Zernick?

19 A That's who he was speaking with regarding --

20 Q Right. It is your --

21 A -- setting the time.

22 Q -- bodycam, but you guys were both present, correct?

23 A Correct.

24 Q Okay. And it was Mr. Neumeier at some point that evening
25 that told you and/or Deputy Chief, then Fire Marshal

1 Zernick at the time, about the pan of oil in the house,
2 correct?

3 A When he described what he had done with his generated, he
4 did describe the pan of oil and where he placed it, yes?

5 Q That day he told you, the day of the fire, Tuesday,
6 November 19th, right?

7 A Correct, it was in the footage we just watched, which was
8 on the 19th.

9 Q Okay. And before he said that, you guys didn't question
10 him about it because you hadn't seen it or knew nothing
11 about it, right?

12 A No, I did not question him about it before that.

13 Q Okay. And then towards the end of the video do you
14 remember some discussion about the gun, maybe in the
15 bedroom, being discovered and found?

16 A Yes.

17 Q And he had told you about that gun as well, right?

18 A He told Officer Fischhaber who relayed it to me, yes.

19 Q Right. Okay. In that same video after the DVR was
20 gotten, after the gun was found, I don't know if it was --
21 I think we were watching your bodycam, but a medicine
22 cabinet was opened, do you remember seeing that?

23 A Yes.

24 Q And who -- was that you?

25 A No.

1 Q That was Deputy Chief Zernick?

2 A I believe so.

3 Q Okay. Do you know why the medicine cabinet was opened at
4 that point? What was being looked for?

5 A No.

6 Q Okay.

7 A My understanding at that time we were looking for
8 valuables to be secured.

9 Q Okay. But the house was going to be secured anyway by the
10 company that was coming, right?

11 A Yes.

12 Q Okay. And Mr. Neumeier definitely didn't say look for
13 valuables in my medicine cabinet, did he?

14 A I do not recall him saying that.

15 Q Okay.

16 And can I ask you towards the last six minutes
17 there before we stopped the video, why would voice be
18 going out during that timeframe, was that intentional?

19 A I muted it to talk to Fire Marshal Zernick.

20 Q Okay. And why is that?

21 A To talk about what we're going to do next or anything else
22 we needed to do.

23 Q Okay, and why -- why did it need to be muted at that
24 point?

25 MR. IDEMA: Your Honor, I'm going to object as

1 to the relevance to the issue of consent. How does the
2 mute -- muting of the volume on the body camera relate to
3 consent?

4 THE COURT: Mr. Metz, your response?

5 MR. METZ: Judge, I can ask it a different way.

6 THE COURT: If you'd like. The -- the objection
7 is overruled at this point in time. I -- if the device
8 was muted, I wasn't sure whether there was a technical
9 error or not, I'll let the witness answer the question
10 whether it was muted intentionally or if it was just part
11 of his device not functioning properly.

12 MR. METZ: Thank you.

13 BY MR. METZ:

14 Q So I think you did say it was muted intentionally --

15 A I believe it was.

16 Q Okay. So that you could speak with Officer Zernick, so
17 that it wouldn't be on here, right? I mean muting it here
18 isn't going to change whether somebody else can hear it
19 out loud, right? But you said it was intentionally muted,
20 you believe, correct?

21 A I believe it was.

22 Q Okay. At that time was there any discussion that evening
23 between you and Zernick about cause and origin as to Phil
24 being a suspect and this being an arson?

25 A I don't recall what we were talking about.

1 Q Could that have happened?

2 MR. IDEMA: Your Honor, I'm going to object.
3 Calls for speculation at that point. He's already said he
4 doesn't remember what they talked about.

5 BY MR. METZ:

6 Q So you don't recall at all --

7 THE COURT: There's an objection, just give me a
8 second, Mr. Metz.

9 It does call for speculation. I'll allow you to
10 follow-up. The objection is sustained.

11 MR. METZ: Thank you, Judge.

12 BY MR. METZ:

13 Q You don't recall at all if you and Deputy Chief Zernick
14 had a discussion as to suspicions of this being an
15 intentionally set fire?

16 A I don't recall what we were speaking about at that point
17 in time.

18 MR. NEUMEIER: I have nothing further, Judge.
19 Thank you.

20 THE COURT: Any follow-up, Mr. Idema?

21 MR. IDEMA: No, Your Honor. Thank you.

22 THE COURT: Is this officer under subpoena as
23 well?

24 MR. IDEMA: He is, Your Honor. At this time I'd
25 ask that he be excused from his subpoena.

1 THE COURT: Thank you, officer, for coming and
2 testifying. You're excused from your subpoena. Have a
3 good day.

4 THE WITNESS: Thank you, Your Honor. You too.

5 (At 4:45 p.m., witness excused)

6 MR. IDEMA: Your Honor, at this time the People
7 would like to call retired Detective Sergeant Gary Harpe.

8 THE COURT: We going to be able to finish this
9 witness's testimony in the next ten minutes? Because if
10 we're not, we're going to adjourn for another day. I'm
11 not keeping my staff past 5:00.

12 MR. METZ: I -- I doubt it, Judge.

13 THE COURT: All right.

14 MR. METZ: I -- I'll let Mr. Idema give his --

15 THE COURT: Detective, you can have a seat next
16 to Mr. Idema at this point in time.

17 Is this the only witness we have left, Mr.
18 Idema?

19 MR. IDEMA: Yes, Your Honor. And this witness
20 goes directly to the motion to quash the search warrant.
21 I don't anticipate spending too much time with him, but I
22 assume defense counsel would be spending most of the time
23 with him.

24 To be honest with you, Your Honor, my -- my
25 brief and response speaks for itself, his testimony is

1 just more cumulative than -- but I -- I understand if
2 defense counsel wants to ask him questions, but --

3 THE COURT: Well I definitely want to work with
4 the detective's schedule. I know they're busy. I know
5 Mr. Idema is with me more often than not.

6 Are you with this court on Friday, Mr. Metz?

7 MR. METZ: Actually, I'm out of town, if that's
8 okay with the Court, on preplanned trip Thursday night and
9 Friday night -- or Friday night and Saturday night, I'm
10 sorry.

11 THE COURT: Must be nice to be a private
12 practicing attorney, Mr. Metz.

13 MR. METZ: I don't do it often. I should be
14 doing it more often.

15 THE COURT: How does July 31st look for both of
16 you in the morning, as well as the detective?

17 MR. METZ: A week from today, the 31st in the
18 morning would work.

19 THE COURT: That would be correct.

20 MR. METZ: That would work for me, Judge.

21 MR. IDEMA: That works, Your Honor.

22 THE COURT: Does that work for the detective?

23 MR. IDEMA: Yes, Your Honor.

24 THE COURT: We don't anticipate it being longer
25 than an hour, do we?

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MR. IDEMA: No, Your Honor.

MR. METZ: I hope not, Judge.

THE COURT: We'll adjourn the matter to July 31st at 11:00 a.m., as the Court has other matters to attend to after the lunch hour for adult drug court.

We stand adjourned until then.

MR. METZ: Thank you, Judge. Thank you for your time.

MR. IDEMA: Thank you.

THE COURT: Any issues with bond? Any issues with bond, Mr. Idema?

MR. IDEMA: Not at this time, Your Honor. There -- there was an issue that I've addressed with defense counsel, hopefully that will have been resolved, so at this time, no, Your Honor.

THE COURT: Bond should be continued.

MR. METZ: Thank you, Judge.

THE COURT: Thanks.

THE CLERK: All rise.

THE COURT: Do we have that Exhibit 1?

THE CLERK: No. I marked it.

MR. IDEMA: Mr. Idema, do you have that Exhibit 1?

MR. IDEMA: I do, yes.

THE COURT: Can you make sure that Ms. Umberg

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has it before we leave today so we can secure it?

MR. IDEMA: Yes, Your Honor.

THE COURT: As well as Exhibit 2. Thank you.

(At 4:48 p.m., proceedings concluded)

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CERTIFICATION

I certify that this transcript, consisting of 120 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Matthew J. McGivney on Wednesday, July 24, 2024, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the Circuit 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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