

STATE OF MICHIGAN

IN THE LIVINGSTON COUNTY CIRCUIT COURT

THE PEOPLE OF THE STATE OF MICHIGAN,

vs

Case No. 2022-27088-FH

PHILIP GERHARD NEUMEIER,

Defendant.

/

MOTIONS/EVIDENTIARY HEARING (CONTINUED)

BEFORE THE HONORABLE MATTHEW J. MCGIVNEY

Howell, Michigan - Wednesday, July 31, 2024

APPEARANCES:

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Advantage Reporting - #8526
248-245-6610

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Howell, Michigan

Wednesday, July 31, 2024

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(At 11:07 a.m., proceedings begin)

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

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

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

MR. METZ: Good morning, Judge. Jim Metz appearing on behalf and with Philip Neumeier.

THE COURT: Welcome. Today's the date and time set for the continued hearings on Defendant's motion to suppress evidence and Defendant's motion to quash a search warrant. We were last on Wednesday, July 24th of 2024, where we came upon the 5:00 hour. It's my understanding that we had one more witness. Is that correct, Mr. Idema?

MR. IDEMA: That is correct, Your Honor.

THE COURT: The Court took on July 24th of 2024, witness Jordan Zernick, Deputy Fire Chief with Hamburg Township, who was the fire marshal at the time of November of 2019. Court also took Jeremy Berard, who was the insurance company's investigator, as the People's witness. The Court also took the testimony of Officer Flavin from

1 Ham -- Hamburg Township Police Department.

2 Who would be your next witness?

3 MR. IDEMA: Your Honor, the Court also took
4 testimony of Officer Kim Leeds.

5 THE COURT: You are correct. Officer Leeds was
6 your first witness.

7 MR. IDEMA: Yes.

8 THE COURT: In my notes I was jumping down to my
9 second witness, Jordan Zernick. I have Officer Leeds,
10 Jordan Zernick, Jeremy Berard, and Officer Flavin.

11 MR. IDEMA: And with that, Your Honor, the
12 People's next witness is retired Detective Sergeant Gary
13 Harpe.

14 THE COURT: Come on up.

15 Good morning, sir.

16 GARY HARPE: Good morning.

17 THE COURT: Raise your right hand and take an
18 oath.

19 THE CLERK: You do solemnly swear or affirm that
20 the testimony you shall give in the matter before the
21 Court will be the truth, the whole truth, and nothing but
22 the truth?

23 GARY HARPE: I do.

24 (At 11:09 a.m., witness sworn)

25 THE CLERK: Thank you.

1 THE COURT: You can have a seat, sir. Please
2 state your full legal name for the record and spell the
3 last.

4 THE WITNESS: Gary Andrew Harp, H-a-r-p-e.

5 THE COURT: Officer, are you retired?

6 THE WITNESS: Yes, sir.

7 THE COURT: You testify in court before?

8 THE WITNESS: Many times.

9 THE COURT: The microphone ahead of you is lit
10 up in red. It only records, does not amplify. Do you
11 recall the instructions I gave the other witnesses at the
12 time they testified?

13 THE WITNESS: Yes, sir.

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

15 THE WITNESS: No, I do not.

16 THE COURT: Go ahead, Mr. Idema.

17 MR. IDEMA: Thank you, Your Honor.

18 Your Honor, we have a couple housekeeping
19 matters before I get started.

20 First of all, we are -- at this point with this
21 witness, we are switching gears to the defense motion to
22 quash the search warrant, and with that, Your Honor, we
23 have a stipulation. In my hand is People's proposed
24 Exhibit Number 3. This is the affidavit for search
25 warrant. With brief discussion with defense counsel, we

1 have a stipulation to the admission of People's proposed
2 3.

3 THE COURT: Can you approach?

4 MR. IDEMA: Yeah.

5 THE COURT: The Court has been provided an
6 affidavit of search warrant, Detective Sergeant Gary Harpe
7 being the affiant, containing four pages dated December
8 11th of 2019.

9 Any objection, Mr. Metz?

10 MR. METZ: None, Your Honor. Thank you.

11 THE COURT: Mr. Idema indicated it was
12 stipulated to; Exhibit 3 has been received by the Court
13 and it is admitted. We will have Ms. Umberg mark the
14 same.

15 (At 11:11 a.m., PX-3 was received)

16 MR. IDEMA: Thank you, Your Honor.

17 THE COURT: Mm-hmm. Does retired detective
18 sergeant have a copy of the same?

19 MR. IDEMA: No, Your Honor. And I apologize,
20 Your Honor, I have my copy, but I don't have a copy --
21 well, no -- yeah, I don't have a copy to present to the
22 Court, I thought I had submitted one with my response to
23 defense motion.

24 THE COURT: I have a copy contained in the file
25 that I can follow along with.

1 THE CLERK: Do we need to make a copy, or we're
2 good?

3 THE COURT: So long as I get it back from the
4 witness, I'll hand it to Detective Sergeant Harpe.

5 THE CLERK: Okay.

6 THE COURT: Detective Sergeant Harpe, I'm
7 handing you what is the admitted People's Exhibit 3.

8 THE WITNESS: Yes, sir.

9 MR. IDEMA: Thank you, Your Honor.

10 GARY HARPE

11 called as a witness, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. IDEMA:

14 Q With that, Detective Sergeant Harpe, can you briefly
15 describe for the record back in 2019, were you employed
16 with the Hamburg Township Police Department?

17 A Yes, I was.

18 Q And in what capacity were you employed with the Hamburg
19 Township Police Department?

20 A Detective Sergeant.

21 Q And in 2019, how many years of service did you have with
22 the Hamburg Township Police Department?

23 A 2019, that would have been 22, 23 years of service.

24 Q Okay. And your entire law enforcement career, how long
25 did that -- how many years were you in law enforcement?

1 A In totality, 26 years.

2 Q 26 years. And were you working in such capacity back in
3 November, December of 2019?

4 A Yes, I was.

5 Q And were you asked -- well, first of all, just for the
6 record, were you in court last week, Wednesday, when we
7 took the testimony of the other officers?

8 A Yes, I was.

9 Q And were you part of the investigative team of the -- the
10 arson that took place at 7809 Winans Lake Road?

11 A Yes.

12 Q And any dispute or any information you have with regards
13 to the date of that -- of the -- the arson, or the date of
14 the fire?

15 A Yes.

16 Q And you heard testimony from the officers involved in this
17 case that it was on -- on November 19th of 2019, is that
18 fair to say?

19 A That is correct.

20 Q Okay. And do you have any recollection or any knowledge
21 that that date would have been or is wrong?

22 A I have no knowledge that it's wrong.

23 Q Okay. So to the best of your knowledge, the -- the fire
24 did take place on November 19th of 2019?

25 A That is correct.

1 Q Okay.

2 Now, Detective Sergeant, did you have -- as part
3 of your responsibilities in this investigation, did you
4 submit an affidavit for a search warrant to search the
5 premises of that location?

6 A Yes, I did.

7 Q And do you recall when did you file that affidavit for a
8 search warrant?

9 A I believe that would have been on -- if it's all right if
10 I look at the exact date?

11 Q Sure.

12 A I believe it would have been on the 19th, correct?

13 Q Well, if you could look at --

14 A Oh, I'm sorry --

15 Q -- People's Exhibit --

16 A -- on December 11th.

17 Q December 11th, 2019?

18 A Yes.

19 Q Okay. And that search warrant was subscribed and sworn to
20 before Magistrate Jerry Sherwood?

21 A That is correct.

22 Q Okay. And you know it was December 19th because -- does
23 it say reviewed on?

24 A That is correct.

25 Q Or, I'm sorry, not December -- December 11th, 2019, and

1 it's dated and reviewed by assistant prosecuting attorney
2 Angela DelVero?

3 A Correct.

4 Q Okay. And there's a section that says, affiant officer,
5 and is that your signature?

6 A Yes, sir.

7 Q Okay. And just so we're clear, just for the record, this
8 -- what's before you is a -- is a photocopy of the search
9 warrant, is that fair to say?

10 A Correct.

11 Q Okay. But do you have any -- any dispute or any reason to
12 dispute that this is a photocopy of your search warrant?

13 A No.

14 Q Okay. And that you did, in fact, submit this search
15 warrant on December 11th, 2019, for authorization to
16 search the premises at 7809 Winans Lake Road, correct?

17 A Correct.

18 Q Okay. Now, the Defendant's motion pointed out three
19 specific areas that they are claiming are false statements
20 contained in this affidavit, so let's -- I want to talk
21 directly to you about those.

22 If you could Sergeant, flip to the second page
23 under paragraph three where it says, the facts
24 establishing probable cause for the search are. Do you
25 see that?

1 A Yes, I do.

2 Q And let's talk about the -- the first part of the -- the
3 affidavit in the first -- first issue the defense has in
4 their motion regarding this affidavit. You see paragraph
5 3A where it says affiant is a detective sergeant with
6 Hamburg Township Police Department?

7 A Yes.

8 Q And it says and has investigated numerous criminal
9 complaints during his 22-year career.

10 A Yes, sir.

11 Q Is there anything about that statement that's false or
12 inaccurate?

13 A No.

14 Q And continuing with that paragraph it says he is a member
15 of the Hamburg Township fire investigation unit and has
16 training and experience with determining cause and origin
17 in regard to fire/arson investigations.

18 A Yes, sir.

19 Q Is there anything about that sentence that is false or
20 inaccurate?

21 A No, sir.

22 Q Now, in defense counsel's motion, he indicated that in
23 your testimony at the preliminary examination you
24 testified that you are not an expert in this area?

25 A That is correct.

1 Q Now, do you recall testifying at a preliminary examination
2 for this case?

3 A I do.

4 Q And do you recall being questioned both by the assistant
5 prosecutor, who conducted the exam, and by the defense
6 counsel about your -- your training and experience in fire
7 investigations?

8 A Yes.

9 Q And at any point in time during the -- during that
10 preliminary examination, did you represent to yourself --
11 or represent to the Court or to either attorney that you
12 were, in fact, an expert in fire investigations?

13 A No, sir.

14 Q Or an expert in cause and origin or fire arson
15 investigations?

16 A No, sir.

17 Q However, during the preliminary examination, did you
18 provide testimony as to your training and experience with
19 regards to fire investigations?

20 A Yes, I did.

21 Q Did you also give testimony with regards to your
22 involvement or inclusion in the Hamburg Township fire
23 investigation unit?

24 A Yes, I did.

25 Q And anything about that -- that testimony you provided

1 during the preliminary examination, was that inaccurate?

2 A No, sir.

3 Q Was it false?

4 A No, sir.

5 Q In paragraph A, was it your intention to present yourself
6 to the magistrate or to insinuate or to refer to yourself
7 to the magistrate as an expert in the area of cause and
8 origin and fire arson investigations?

9 A No, sir.

10 Q Did you put anywhere in paragraph A that you were in an
11 expert in that area?

12 A No, sir.

13 Q Did you put anywhere in paragraph A or is there anywhere
14 in paragraph A that indicates that you are an expert in
15 fire investigations or cause and origin investigations?

16 A No, sir.

17 Q Is it your testimony here today that the representations
18 made in paragraph A are true to the best of your
19 knowledge?

20 A Yes, sir.

21 Q Is there anything in paragraph A that is inaccurate or
22 intentionally false or misleading that you put in there?

23 A No, sir.

24 Q Going to the next section of the Defendant's motion. The
25 defense argues that paragraph C is intentionally

1 misleading or false. Do you see paragraph C?

2 A I do.

3 Q And it starts, on November 11th, 2019, the Hamburg
4 Township fire department and Hamburg Township police
5 department were dispatched to 7809 Winans Lake Road for a
6 structure fire; do you see that sentence?

7 A Yes, sir.

8 Q Now, Detective Sergeant, you just testified that the other
9 officers testified last week that the fire occurred on
10 November 19th?

11 A Correct.

12 Q And you don't have any dispute about that?

13 A I do not.

14 Q Yet, your search warrant, paragraph C starts on November
15 11th, 2019. Can you explain to the Court why you put
16 November 11th, 2019, instead of November 19th, 2019?

17 A It's nothing more than a typo. I hit the wrong key on the
18 computer, and in my review and other people's reviews,
19 none of us caught it.

20 Q Okay. So that was a typo or a typographical error?

21 A Correct.

22 Q Was that in any way, shape, or form put there in an
23 attempt to mislead the magistrate?

24 A No, sir.

25 Q Was it intentionally put in there?

1 A No, sir; that was by accident.

2 Q Okay. Detective Sergeant, according to Defendant's
3 motion, that's the only issue with regards to paragraph C
4 that they're claiming is intentionally false or
5 misleading. Is it your testimony here today that that was
6 a typo -- typographical error and a mistake and was not
7 intentionally done?

8 A Correct.

9 Q I want to move to paragraph D. Defendant's motion also
10 claims that is paragraph is false. Do you see paragraph
11 D?

12 A I do.

13 Q And do you see where it says when Fire Marshal Zernick
14 spoke to Philip Neumeier, he received a voluntarily -- vol
15 -- voluntary signed consent to search?

16 A Yes, sir.

17 Q I'm sorry, consent to conduct a search to try to determine
18 cause and origin; you see that -- that first sentence?

19 A Yes, sir.

20 Q Is there anything about that first sentence that is false
21 or misleading?

22 A No, sir.

23 Q Did you, in fact, have communication with Fire Marshal
24 Zernick prior to drafting this search warrant?

25 A Yes, I did.

1 Q And did Fire Marshal Zernick indicate to you that he had
2 spoken to Philip Neumeier?

3 A Yes, he did.

4 Q And did he also indicate to you that he had received a
5 voluntary consigned consent to conduct a search to try to
6 determine cause and origin?

7 A Yes, he did.

8 Q And prior to your submission of this affidavit for a
9 search warrant, did you have an opportunity to actually
10 view that consent to search form?

11 A Yes, I did.

12 Q And more specifically, when you were here in court last
13 week, did you hear the testimony of both Officer Leeds and
14 Fire Marshal Zernick with regards to that consent to
15 search form?

16 A Yes, I did.

17 Q And with regards to that form, were you also present in
18 court when the -- that particular document was entered
19 into evidence, I believe, as People's Exhibit 1?

20 A Yes, I was.

21 MR. IDEMA: Your Honor, does the Court still
22 have in its possession People's Exhibit 1?

23 THE COURT: We do. Ms. Umbert's collecting that
24 11:24:20

25 MR. IDEMA: Thank you.

1 THE COURT: Let the record reflect we do have a
2 copy -- or the original People's Exhibit 1 dated -- or
3 entered into evidence on July 24th of 2024.

4 Are you asking for the witness to look at that
5 document?

6 MR. IDEMA: Yes, please, Your Honor.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Let the record reflect the Court is
9 handing Exhibit 1 to the witness.

10 BY MR. IDEMA:

11 Q Now, Detective Sergeant, if you could take just a brief
12 second to look at People's Exhibit 1, and let me know when
13 you're done.

14 A I'm ready.

15 Q Okay. Detective Sergeant, is the -- the consent to -- to
16 conduct a search form that you referenced in paragraph D
17 of your affidavit for a search warrant?

18 A Yes, it is.

19 Q And did you view that document prior to submitting your
20 affidavit for the search warrant?

21 A Yes, I did.

22 Q And did your communication with Fire Marshal Zernick occur
23 prior to your submitting the affidavit for search warrant?

24 A Yes, it did.

25 Q Now, with regards to par -- if you could turn back to

1 People's Exhibit 3 with regards to paragraph D -- three D,
2 in that first paragraph do you indicate or do you place in
3 there any representation as to when that document was
4 signed?

5 A This document does not indicate here specifically when the
6 document was signed in this paragraph, no.

7 Q And if you could do me a favor, if you could read to
8 yourself paragraph D, and can you look through there, at
9 any point in time in that paragraph do you make any
10 representation as to when that document was signed by Mr.
11 Neumeier?

12 A No, I did not.

13 Q With regards to that first sentence, is there anything
14 that is false or misleading about that sentence?

15 A No, sir.

16 Q Is that sentence contained in paragraph three D as result
17 of your communication with Fire Marshal Zernick and your
18 own personal observation of People's Exhibit 1?

19 A Yes.

20 Q Thank you, Detective Sergeant.

21 Those are the only issues the defense have
22 brought in their motion with regards to your search
23 warrant.

24 MR. IDEMA: I have no further questions.

25 THE COURT: Mr. Metz.

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MR. METZ: Thank you, Judge.

CROSS-EXAMINATION

BY MR. METZ:

Q Detective Sergeant -- retired Detective Sergeant Harpe, you are not working at the police department anymore, correct, you're retired?

A Correct.

Q Correct. And did you stay on at all with Hamburg Township Fire?

A I'm sorry?

Q Did you stay on at all with Hamburg Township Fire, are you employed by them at all right now?

A No.

Q Have you ever been employed by them?

A Many, many years ago.

Q Okay. How many years ago was that?

A Boy, it's got to be 23, 24 years ago.

Q Okay. And in what capacity?

A I was just a firefighter.

Q Volunteer or --

A Yes.

Q Okay. So you were a volunteer firefighter over 20 years ago, just recently retired from Hamburg Township PD, but other than what you just indicated in terms of voluntary, you've never been employed by the fire department, and

1 post-retirement, they haven't kept you on because of any
2 training or expertise, correct?

3 A Correct.

4 Q Okay.

5 And the location of this fire on Winans Lake
6 Road, you were not there on November 19th, the date of the
7 fire, correct?

8 A Correct.

9 Q In fact, you weren't even called out that day, were you?

10 A I may have received a phone call on it late that evening
11 or early morning hours, but I -- I can't say specifically
12 when that phone call came in.

13 Q Nobody asked you to go out there the day of the fire?

14 A Correct.

15 Q Because had they, you would have gone, right?

16 A Correct.

17 Q Okay. But instead of you, we see that Officer Fla --
18 Flavin was there, right?

19 A Yes.

20 Q Okay. And he's also from the Hamburg Township police
21 department?

22 A Correct.

23 Q Okay. And you did go to the location on Winans Lake Road
24 on November 20th, the day after the fire, right?

25 A Correct.

1 Q And again on the 21st?

2 A I believe so.

3 Q Okay. And both those days were without a search warrant,
4 correct?

5 A Yes.

6 Q Okay. And at least one, if not both of those days were
7 also without a consent -- a signed consent from, correct?

8 A No, that's not correct.

9 Q Okay. Why is that?

10 A Because Fire Marshal Zernick indicated to me that he had
11 one.

12 Q Okay. So when did he indicate that to you?

13 A That would have been the following day, not the day of the
14 fire, the following day when I went onto the scene.

15 Q Okay. So, that he had one when? Because we heard that
16 Officer Leeds was a witness, right?

17 A Correct.

18 Q And we heard that Officer Leeds didn't work on November
19 19th, so she couldn't have been a witness on the 19th,
20 right?

21 A Correct.

22 Q And we heard at the earliest that she could have been a
23 witness was on November 20th at six p.m. or thereafter,
24 right?

25 A I believe so, I'm not sure what shift --

1 Q Because she worked the --

2 A -- was that day --

3 Q -- midnight shift --

4 A -- I don't know.

5 Q -- she said, six -- you don't remember her saying six p.m.
6 to six a.m.?

7 A I don't specifically remember that --

8 Q Okay.

9 A -- no.

10 THE COURT: Are we still on the same issue about
11 quashing the search warrant? Because I don't know why
12 we're going back to the -- the date of the fire.

13 MR. METZ: I --

14 THE COURT: If this issue is only about quashing
15 a search warrant and the statements made in the search
16 warrant that you claim were made falsely, we're going to
17 keep the focus on the search warrant.

18 MR. METZ: Okay, I will. I was kind of
19 parlaying a little bit about the suppression because we're
20 still kind of within and he's -- he's a witness for that,
21 but I'll -- I'll move on, Judge.

22 BY MR. METZ:

23 Q The search warrant that you executed, you testified to
24 today was on December 11th, correct, is when you wrote the
25 search warrant?

1 A Incorrectly, yes.

2 Q Well, incorrectly what? You -- you did --

3 A The -- the date is -- that was a typo.

4 Q December 11th you did submit it, right?

5 A Oh, I submitted it on --

6 Q Yes.

7 A -- December 11th, correct.

8 Q Okay.

9 A Yes.

10 Q And when was that search warrant executed?

11 A It would have been executed that day, I believe.

12 Q Okay. And how about days thereafter?

13 A Yes.

14 Q Okay. How many days thereafter and when was the last day?

15 A I don't recall. I -- I can't -- I'd have to go back to

16 look through the reports.

17 Q Was it into late December, early January?

18 A I don't believe that far, no.

19 Q Okay. So you submitted the affidavit, and obviously the

20 first section is a affidavit for the search warrant, and

21 you have it in front of you under number three, the facts

22 establishing probable cause for the search are, and the

23 first thing you put under there is -- the first thing the

24 judge, magistrate, examining magistrate is going to read

25 is your experience, right?

1 A Yes, sir.

2 Q Okay. And at that time you apparently had 22 years at
3 Hamburg Township, right?

4 A Correct.

5 Q And at the time you also wrote a member of the fire
6 investigation unit with training and experience
7 determining cause and origin in regard to fire arson
8 investigations, right?

9 A Correct.

10 Q What is your training and experience?

11 A I am an evidence technician, had been for probably 20
12 years of my career, there's been various training that
13 I've gone to because of that, I also attended a specific
14 arson class which was conducted at Oakland Police Academy,
15 that must have been within the last 12 years of my career,
16 I -- I couldn't tell you exactly what year, but --

17 Q Regarding an evidence tech, that -- that's part and parcel
18 with your job as a policemen, right?

19 A No, it's more advanced than just being trained as a police
20 officer.

21 Q So was the evidence tech -- evidence tech experience that
22 you're talking about solely as to fires?

23 A Well, various topics, but one of those topics would have
24 been fires.

25 Q Okay. And when was that training and where?

1 A That -- that has been ongoing training throughout my 20
2 years as an evidence tech. So I can't give you a specific
3 day or when the training took place, I -- I don't recall.

4 Q The arson class that you're talking about, that was
5 probably a one week or less class; is that correct?

6 A Yes.

7 Q Was it a whole week even?

8 A I don't think so. I think it was -- if I remember
9 correctly, a two or three-day class --

10 Q Okay. So you --

11 A -- specific to arson investigation.

12 Q Okay. So you attended a two or three-day arson class 12
13 years ago?

14 A Not 12 years ago, within the last 12 years.

15 Q Okay.

16 A I can't give you a specific year.

17 Q Okay. So within the last 12 years, a two or three-day
18 arson class, and what -- what kind of certification did
19 you get out of that?

20 A I don't -- I wouldn't say it's a certification. I -- I
21 think it's just an ongoing additional training.

22 Q Okay, you're not sure?

23 A There is -- I don't have a specific certification for
24 that.

25 Q All right. Well let's just get down to the point.

1 When say, quote/unquote, training and experience
2 with determining cause or origin in regard to fire arson
3 investigations, what did you want the magistrate to
4 believe at that point?

5 A That I have some knowledge and some experience in that.

6 Q Okay. So you didn't say some, though, you just -- you
7 said training and experience, right?

8 A Correct.

9 Q Your training and experience is not -- is not great and
10 voluminous, is it?

11 A I guess that depends on the individual.

12 Q Well do you think it is?

13 A I guess it depends on the circumstances and the individual
14 -- specific individual.

15 Q Okay.

16 A Their interpretation of it.

17 Q So my question to you is do you really think you're
18 trained and experienced?

19 A I do have some, yes, sir.

20 Q Okay. Some, but the word some isn't there, right?

21 A No, of course not.

22 MR. IDEMA: Your Honor, I'm going to object at
23 this point. The witness has -- has answered the question.
24 At this point, it's more just badgering at this point.

25 MR. METZ: No, I'm not trying to badger. I

1 respect Detective Sergeant Harpe. I'm just trying to get
2 down to the bottom of what -- what he intended when he
3 wrote that and what he intended the Court to believe when
4 he wrote it.

5 THE COURT: I understand, Mr. Metz, but the
6 Court also went to law school and the Court can read and
7 understands that some is not located in the affidavit --

8 MR. METZ: Okay.

9 THE COURT: -- and this witness had already
10 testified that some was not located in that affidavit, and
11 at this point in time the objection is -- is sustained.

12 MR. METZ: All right. I'll move on.

13 THE COURT: The document says what it says.

14 MR. METZ: Thank you.

15 MR. IDEMA: Thank you, Your Honor.

16 BY MR. METZ:

17 Q Are you NFPA certified?

18 A No.

19 Q Okay. Have you ever determined the cause and origin
20 during your career on any fire, you yourself?

21 A No, I cannot. I don't have the ability to do that.

22 Q Okay. So you didn't do that here and you've never done
23 it?

24 A No.

25 Q Okay. I'm going to move on past paragraph C, which Mr.

1 Idema had talked to you about in terms of the type, and
2 moving on to paragraph D.

3 You said when Fire Marshal Zernick spoke to
4 Philip Neumeier, he received a voluntary signed consent to
5 conduct a search to try to determine cause and origin,
6 period.

7 When were you saying that that consent to search
8 form was obtained?

9 A I was not saying specifically when it was obtained.

10 Q Okay. But you went on in the next sentence and said from
11 that voluntary consent from that consent form, Fire
12 Marshal Zernick had located a hard drive for the video
13 home surveillance system. But that wasn't true, was it?
14 Because you've heard testimony in that Mr. Neumeier
15 actually said on the date of the fire, go in the house and
16 grab it, and they did grab it, right?

17 A That is correct, yes.

18 Q Okay. So those two things actually don't jive, do they?

19 A No, technically --

20 Q Because we -- we would agree --

21 A -- yeah, technically there is -- there is a difference
22 between the two, yes.

23 Q Okay. Because we would agree that the DVD system was
24 given on the 19th?

25 A Correct.

1 Q He said go in, there's one in there, take it, right? But
2 we would also agree that there still has been no voluntary
3 consent to search form because we know it didn't happen on
4 the 19th, right?

5 A Yes, I believe -- I don't believe it happened on the 19th.

6 Q Okay.

7 Back to your -- it further says, Philip granted
8 him access to the hard drive, which is consistent with
9 what happened on the 19th --

10 A Correct.

11 Q -- after all, correct?

12 A Correct.

13 Q Okay. You do make mention in the affidavit towards the
14 end about watching the home surveillance systems in
15 paragraph G and that Mr. Neumeier could be seen removing
16 property from his home the day prior to the fire, right?

17 A Correct.

18 Q What kind of property was that?

19 MR. IDEMA: Your Honor, at this time I would
20 object. Paragraph G is not the subject matter of
21 Defendant's motion.

22 THE COURT: Mr. Metz, your response?

23 MR. METZ: Well, the search -- the whole search
24 warrant is the subject matter of the motion, Judge.

25 MR. IDEMA: I disagree, Your Honor. Defense

1 specifically pointed out these three specific areas.

2 THE COURT: Let me be clear, the Court doesn't
3 even have to grant an evidentiary hearing regarding this
4 matter, and it is, Mr. Metz has objected on two basis and
5 that not being one of them.

6 Move on.

7 MR. METZ: I'm sorry, Judge, I -- I -- so don't
8 --

9 THE COURT: This is a motion to quash a search
10 warrant.

11 MR. METZ: Right.

12 THE COURT: The Court doesn't need to grant an
13 evidentiary hearing on this is issue in and of itself, Mr.
14 Metz.

15 MR. METZ: I understand.

16 THE COURT: You've objected based upon several
17 aspects of the search warrant being false, misleading.
18 This is not one of them that you've objected to.

19 MR. METZ: So you're saying don't ask that? I -
20 - I want to make sure --

21 THE COURT: I'm just saying move on --

22 MR. METZ: Okay.

23 THE COURT: -- to -- to something you've
24 objected to so the Court can get a better understanding of
25 what we're really looking at.

1 MR. METZ: Okay. I have no further questions,
2 Judge.

3 THE COURT: Any follow-up?

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

5 THE COURT: Detective Sergeant Harpe, you're all
6 set. You can have a seat next to Mr. Idema.

7 THE WITNESS: Would you like this back?

8 THE COURT: Thank you.

9 (At 1:40 p.m., witness excused)

10 Any other witnesses, Mr. Idema?

11 MR. IDEMA: Not from the People, Your Honor.
12 Thank you.

13 THE COURT: The defense wish to call any
14 witnesses?

15 MR. METZ: No, thank you, Your Honor.

16 THE COURT: Based upon the -- the evidentiary
17 hearing set in this matter, Mr. Idema, would you like to
18 make any additional argument?

19 MR. IDEMA: Just, Your Honor, the People will
20 rely on our responses and briefs and support and my
21 previous statements made last week during the -- the
22 hearing last week. Thank you.

23 THE COURT: Mr. Metz?

24 MR. METZ: Judge, just briefly. I'd say that as
25 stated in prosecution's brief, Tyler and Clifford, I think

1 speak heavily that in this case, and I think there's no
2 argument that on November 20th -- there was no search
3 warrant on November 20th at least until after six, and
4 probably not until November 12st after six that there was
5 any authorization for them to continue to go in on a cause
6 and origin investigation without a consent to search form
7 or without a search warrant. There's absolutely zero
8 exigent circumstances.

9 I think Tyler and Clifford speak to our
10 situation and I'd ask that you grant both of our motions.
11 Thank you.

12 THE COURT: The Court's going to take a brief
13 break at this point in time. I am going to put my notes
14 together from the July 24th, '24 hearing, as well as from
15 today's hearing, and should only take me ten minutes or so
16 to fill in the rest of the testimony, then I'll be back
17 before lunch.

18 We'll stand at recess until about 11:55, and the
19 Court will give its opinion on both the Defendant's
20 motions to suppress evidence and Defendant's motion to
21 quash search warrant orally from this record.

22 We stand adjourned.

23 THE CLERK: All rise.

24 (At 11:43 a.m., court recessed)

25 (At 12:00 p.m., court resumed)

1 THE CLERK: Court recalls case 22-27188-FH, the
2 People versus Philip Neumeier.

3 THE COURT: We're back on the record on the
4 People versus Philip Neumeier, case number 22-27188-FH.

5 The Court took a brief recess to put its notes
6 together to give its opinion on this record.

7 Appearances for the record, starting with the
8 People.

9 MR. IDEMA: Thank you. Good morning, Your
10 Honor. Steve Idema on behalf of the prosecution.

11 MR. METZ: Your Honor, Jim Metz appearing on
12 behalf of Philip Neumeier.

13 THE COURT: We have two matters before the
14 Court, as the Court went over earlier this morning,
15 Defendant's motion to suppress evidence, Defendant's
16 motion to quash a search warrant.

17 The Court will take the motion to suppress
18 evidence first.

19 The exigent circumstances exception is
20 recognized as an exception to 4th Amendment warrant
21 requirement in People versus Cartwright, 454 Mich 515,
22 1997, there exists a community caretaking exception to
23 warrant requirement that falls under the broad heading of
24 the exigency exception.

25 The community caretaking exception to the

1 warrant requirement applies when a firefighter responding
2 to an emergency call involving a threat to life or
3 property reasonably enters a private residence in order to
4 abate was is reasonably believed to be imminent threat of
5 fire inside; People versus Slaughter, 489 Mich 302, 2011.

6 MCL 2 -- MCL 29.6 allows a fire marshal to enter
7 a building and inspect it to investigate the cause or
8 origin a fire. While the statute does not create a per se
9 exception to the warrant requirement under the 4th
10 Amendment, the U.S. Supreme Court has held that quote, a
11 burning building clearly presents exigency of -- exigency
12 -- excuse me -- of sufficient proportions to render a
13 warrantless entry reasonable, and for a reasonable time
14 thereafter, firefighters may seize evidence of arson that
15 is in plain view and investigate the causes of the fire
16 under Michigan versus Tyler, 436 U.S. 499, 1978.

17 The U.S. Supreme Court went on that it may be
18 necessary for fire officials in perusing their duty to
19 extinguish fire, to ascertain origin, to remain at the
20 scene for an extended period of time, repeatedly entering
21 or reentering building or buildings. Trial court are
22 directed to consider all the circumstance to determine
23 what constituted a reasonable time. The Tyler court
24 determined that when firefighters had to leave the scene
25 due to smoke and steam in the late hour impeding the

1 investigation, returning the next morning, was a
2 reasonable continuation of the investigation, the warrant
3 was not needed for the return.

4 During the evidentiary hearing on the motion to
5 suppress evidence, fire -- Deputy Fire Chief Jordan
6 Zernick testified that he was a fire marshal in November
7 of 2019, when he was called out to the site of a current
8 fire at Defendant's residence, and he took the lead on
9 extinguishing the fire and investigating the origin and
10 cause of the fire. Fire Chief -- Deputy Fire Chief Jordan
11 Zernick testified that they arrived between 3 and 5 p.m.,
12 that they lost the light, and the smoke was everywhere.
13 They boarded it up -- meaning the home of the defendant,
14 Mr. Neumeier, and locked it down, and returned the next
15 morning.

16 He clarified that he and his fire department
17 team continued to have control and custody of the scene on
18 November 19th of 2019, November 20th of 2019, and November
19 21st of 2019, and he had a key to the lockbox. The
20 premises were not returned over to Defendant Philip
21 Neumeier. The local police department, being Hamburg
22 Township Police Department, were not given a key to the
23 lockbox.

24 He testified at length that he and his team
25 appeared at the site of the fire on November 20th of 2019,

1 and November 21st, 2019, to continue suppression efforts
2 to determine the origin or cause of the fire, and remained
3 -- the remains of the fire continued to smolder for
4 numerous days, and the overhaul process took several days.

5 Deputy Fire Chief Jordan Zernick also testified
6 he thought the fire was suspicious since it had a strange
7 burn pattern, but did not suspect an arson until November
8 27th of 2019, when they found the pan of oil and the cloth
9 wrapped lamp while clearly -- while clearing away rubble.

10 When he suspected criminal activity, the fire
11 cause investigation was halted immediately. Deputy --
12 he's a deputy fire chief now, but at the time Deputy Fire
13 Chief Zernick was the fire marshal. Fire Marshal Zernick
14 at that point in time in 2019, testified that he retained
15 control of the site for the entire duration of the origin
16 and cause investigation. He also testified that when the
17 Defendant asked him to go to house and retrieve his
18 computer for him, that Fire Marshal Zernick did so and
19 gave it to the Defendant. This tends to show that the
20 investigation was not of criminal nature and criminal
21 activity was not suspected on November 19th of 2019, as
22 the fire department so willingly turned over the computer
23 containing surveillance footage of the property to the
24 Defendant or the Defendant's computer in and of itself.

25 Insurance fire investigator Jeremy Berard

1 testified at the hearing that he asked for and received
2 permission from the Defendant to enter the property and
3 conduct his investigation of the fire. He received the
4 new case on November 20th of 2019, and reached out to Mr.
5 Neumeier on November 21st of 2019.

6 He met with Fire Marshal Zernick and Detective
7 Harpe on November 22nd of 2019, and they had the property
8 locked down. He testified the -- the entire place was
9 boarded up and locked when he arrived. The fire
10 department allowed him entry.

11 On November 27th of 2019, when Berard returned
12 with his electrical engineer, the fire marshal still had
13 the property locked down and in his control.

14 On November 27th, 2019, was the time when Mr.
15 Berard, Fire Marshal Zernick, and Detective Harpe
16 discovered a floor lamp with a halogen bulb wrapped in a
17 cloth laying in an oil pan. The position in which they
18 found the device was in an area that was undisturbed. Mr.
19 Neumeier told Mr. Berard about the pan of oil and texted
20 him a picture of it. Mr. Berard receiving this tip is
21 what prompted him to look for oil pan.

22 Mr. Berard testified the origin or cause of the
23 fire had not been determined until they found the oil pan
24 with a lightbulb in it.

25 Officer Flavin testified that he arrived on the

1 evening of November 19th of 2019, and the overall process
2 was still ongoing, and was not concluded when he left on
3 November 19th of 2019. He testified that he spoke to Mr.
4 Neumeier, and Mr. Neumeier asked Fire Marshal Zernick to
5 go into the house and retrieve Mr. Neumeier's computer
6 with four monitors.

7 Officer Flavin's bodycam footage was also
8 presented to the Court, and reflects Mr. Neumeier making
9 that request. The video shows, and Officer Flavin
10 testified that Fire Marshal Zernick went into the house
11 and retrieved the computer and gave it to Defendant.

12 The Defendant further indicated on the night of
13 November 19th, 2019, that he had a security system that
14 would show the goings on outside the house.

15 Officer Flavin testified that he spoke to Fire
16 Marshal Zernick off the record after speaking to Mr.
17 Neumeier addressing the next steps. He could not recall
18 what other topics he and Fire Marshal Zernick spoke about
19 at that time.

20 The facts of this case now before this court are
21 strikingly similar to those in Tyler. The firefighters
22 arrived on the scene on November 19th of 2019, due to a
23 call from a concerned passerby that the building was
24 smoking heavily. When they arrived, there was a fire in
25 the garage and a fire in the basement, so they entered the

1 building to extinguish the fire. It was evening by the
2 time the fire was extinguished. Due to low visibility,
3 they left the premises and returned the next day.

4 They asked the Defendant, Mr. Neumeier, to
5 consent to enter the premises, and Defendant gave verbal
6 consent. He ever asked the firefighters to reenter to
7 retrieve some items for him. Then on November 20th of
8 2019, Defendant signed a consent to enter.

9 These facts satisfy the exigent circumstances
10 exception the warrant requirement, thus the enter and
11 search on 11/19 of 2019, and 11/20 of 2019, was not in
12 violation of his 4th Amendment rights.

13 The plain view doctrine also supports the
14 conclusion that the search was constitutional. If there
15 are exigent circumstances or evidence in plain view, no
16 warrant is required for investigation of causes of fire,
17 nor is a warrant required for prophylactic regulatory
18 inspection of public places.

19 Evidence acquired by firefighters lawfully on
20 the premises in putting out the fire is admissible under
21 the plain view doctrine. An object which comes into view
22 while firemen are removing rubble or searching areas where
23 causes of fire is likely to be found may be preserved
24 without a warrant.

25 Here in this case, the oil pan with a lightbulb

1 wrapped in the cloth, and the lamp being in the on
2 position, were discovered during moving the damaged items
3 in the basement, and also based upon Defendant's tip that
4 he had a pan of motor oil in the basement.

5 After the evidentiary hearing, and considering
6 all of the circumstances and testimony, the Court finds
7 that the search in and on November of 2019, was a
8 reasonable warrantless search that falls under the exigent
9 circumstances exception to the 4th Amendment.

10 Defendant's motion to suppress the evidence
11 uncovered during the warrantless search is denied.

12 Regarding the motion to quash the search
13 warrant. In order to prevail on a motion to suppress, the
14 evidence obtained pursuant to search warrant procured with
15 alleged false information, a defendant must show by a
16 preponderance of the evidence that the -- the affiant had
17 knowingly, intentionally, or reckless disregard for the
18 truth, inserted false information in the affidavit, and
19 that the false material was necessary to a finding of
20 probable cause.

21 Moreover, to become entitled to an evidentiary
22 hearing to challenge the validity of a search warrant, the
23 defendant must make a substantial preliminary showing that
24 a false statement knowingly, intentionally, or with
25 reckless disregard for the truth, was included in the

1 affidavit, and such statement was necessary to the finding
2 of probable cause.

3 After looking at the statements that Defendant
4 is claiming that Detective Sergeant Harpe made falsely in
5 the affidavit in support of the warrant, and after the
6 reviewing the affidavit attached to the People's response
7 and admitted into evidence, and after reviewing the
8 preliminary examination transcript, the Court finds that
9 Defendant is unable to demonstrate the threshold
10 substantial preliminary showing that the statements were
11 knowingly, intentionally, and recklessly false, and that
12 those statements were material to the finding of probable
13 cause.

14 Even though the Defendant was not strictly
15 entitled to an evidentiary hearing, the Court preferred to
16 make more of a complete record and allow a Franks hearing
17 to move forward, so that the most complete picture of the
18 evidence could be presented. The Court allowed the
19 parties to present evidence on Defendant's motion to quash
20 the search warrant.

21 During the hearing held on July 31st of 2024,
22 which is today, retired Detective Sergeant Harpe testified
23 he was familiar with the fire investigation process,
24 having had many years of experience in investigating the
25 origin and causes of fires. He testified about his

1 training and experience, including the arson investigation
2 class he took, and the on-the-job training he received in
3 regards to collection and preservation of evidence.

4 However, he never held himself out to the magistrate in
5 the affidavit in support of the search warrant to be an
6 expert.

7 He clarified that he had been a volunteer
8 firefighter for about 20 years -- about 20 years ago, but
9 other than that, he was not employed as a firefighter. He
10 had been employed as a member of the Hamburg Township
11 Police Department for 22 to 23 years prior to his
12 retirement.

13 Detective Sergeant Harpe further testified that
14 the affidavit contained a typo. Specifically, the fire
15 occurred on November 19th of 2019, not November 11th of
16 2019. He stated that he hit the wrong number key in
17 typing the affidavit, he did not catch the typo in
18 reviewing prior to submitting it to the magistrate, nor
19 did anyone else from his office.

20 He continued that he spoke with Fire Marshal
21 Zernick before he completed and submitted his affidavit in
22 support of the search warrant, and he learned from Fire
23 Marshal Zernick that a voluntary signed written consent to
24 search form had been obtained from Mr. Neumeier.

25 Furthermore, he never represented in the affidavit when

1 the consent to search was obtained from Mr. Neumeier.

2 After conducting the evidentiary hearing and
3 reviewing the filings, the Court finds the Defendant
4 failed to show by a preponderance of the evidence that the
5 affidavit had knowingly and intentionally or with reckless
6 disregard for the truth inserted false material into the
7 affidavit, and that the false material was necessary to
8 the finding of probable cause.

9 Some of the statements in the affidavit that
10 Defendant claims are false contain immaterial
11 discrepancies in dates that were the mere result of
12 typographical error. Detective Sergeant Harpe testified
13 that the incorrect date was a mere mistake.

14 As to defect -- def -- excuse me, Detective
15 Sergeant Harpe's training and experience, the Court finds
16 the statements in the affidavit and the statements at the
17 preliminary exam do -- do not actually conflict with one
18 another. Detective Sergeant Harpe emphasizes training and
19 experience in the affidavit, but he never stated to the
20 magistrate he was, in fact, an expert. Detective Sergeant
21 Harpe dec -- declining to call himself an expert at the
22 preliminary exam is consistent and accurate with his
23 representation in the affidavit, and consistent and
24 accurate with his testimony today.

25 Defendant did actually sign a consent to search

1 on November 20th of 2019, but which was prepared on
2 November 19th of 2019. The affidavit does not state the
3 consent to search was obtained on November 19th of 2019.
4 Detective Sergeant Harpe testified at the evidentiary
5 hearing that he was not sure exactly when the consent was
6 signed, but he did not think it was on November 19th of
7 2019. He testified that he did have information based
8 upon his conversation with Fire Marshal Zernick and
9 Officer Flavin that a consent to search was obtained
10 sometime before he authored the affidavit.

11 And the Court finds it is a true -- it's true
12 that a consent to search was executed by Mr. Neumeier long
13 before December 11th of 2019, when the affidavit was
14 actually submitted to Magistrate Sherwood.

15 Defendant has not made the threshold showing.
16 Even though Defendant was not entitled to an evidentiary
17 hearing or a Franks hearing, the Court did exercise its
18 discretion and grant one.

19 In this case, the Court did allow an evidentiary
20 hearing, and after hearing all the evidence, the Court
21 concludes that none of the minor inaccuracies in the
22 statements made in support of the search warrant were
23 knowingly or intentionally false, nor were they made with
24 reckless disregard for the truth.

25 The Court further finds that none of the minor

1 inaccuracies Defendant complains of undermine the
2 magistrate's finding of probable cause.

3 The circumstances described in the affidavit set
4 forth a substantial amount of material facts that easily
5 satisfy the threshold requirement of probable cause.

6 For all those reasons, Defendant's motion to
7 quash the search warrant is also denied.

8 In terms of next dates. My order of June 28th
9 of 2024, indicated we have set the next date on July 24th
10 of 2024, with the anticipation of that date being enough
11 time to conclude the hearing. Obviously, we're here on
12 July 31st of 2024. The -- these two matters have now been
13 concluded.

14 We're looking at a -- a final settlement
15 conference in this matter.

16 How long do we want to go out, Mr. Idema?

17 MR. IDEMA: I'll defer to defense counsel.

18 THE COURT: Mr. Metz?

19 MR. METZ: Well, I'm sure subpoenas still have
20 to go out as well, so if we go into October at a minimum,
21 that would be good.

22 THE COURT: I'm just looking at the final
23 settlement conference at this point in time. I'm not
24 looking at --

25 MR. METZ: Oh, okay.

1 THE COURT: -- at trial dates.

2 MR. METZ: Okay.

3 THE COURT: I would set the -- the trial dates
4 as the court had set the trial dates earlier for -- or at
5 the final settlement conference.

6 MR. METZ: In terms of -- if we're just setting
7 the final settlement conference date, Judge, any -- almost
8 any Friday would work then. It doesn't have to wait until
9 October.

10 THE COURT: I'm looking at August 30th or
11 September 6th.

12 MR. IDEMA: Either day works for me.

13 MR. METZ: Can we do the 6th, Judge?

14 THE COURT: That's not a problem. It's the
15 Friday after Labor Day. We'll do September 6th at 10
16 o'clock.

17 Any issues regarding Mr. Neumeier and bond, from
18 the People?

19 MR. IDEMA: Not that I'm aware of, Your Honor.
20 Thank you.

21 THE COURT: Bond will be continued.

22 MR. METZ: Thank you for your time, Judge.

23 THE COURT: Thank you.

24 (At 12:17 p.m., proceedings concluded)

25 - - -

CERTIFICATION

I certify that this transcript, consisting of 47 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 31, 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.



/s/ Deanna L. Harrison, CER 7464
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