OFFICE OF THE COUNTY PROSECUTOR
COUNTY OF MONMOUTH

132 JERSEYVILLE AVENUE
FREEHOLD, NJ 07728-2374
(732) 431-7160

RAYMOND S. SANTIAGO
MONMOUTH COUNTY PROSECUTOR

May 27, 2025

The Honorable Marc C. LeMieux, A.J.S.C.
Monmouth County Courthouse
71 Monument Park
Freehold, New Jersey 07728

Re: State of New Jersey v. Paul Caneiro
Indictment No. 19-02-0283; Case No. 18004915
Motion To Suppress Evidence Seized Without a Warrant
Returnable: June 3, 2025

Dear Judge LeMieux:

Please accept the following letter in response to the above-captioned motion, by way of which the defendant seeks suppression of evidence seized and searched without a warrant, specifically "any/all evidence pertaining to a and deriving from the DVR system." The State provides the following brief summary of relevant facts, aware that this Court has already heard some testimony related to the search at issue during the N.J.R.E. 104(c) motion, see Statement of Reasons, at pp. 3-4 (May 6, 2025), and will hear additional testimony at the hearing of this motion:

Officers from the Ocean Township Police Department arrived at the defendant's residence at approximately 5:04 a.m. on November 20, 2018 in response to 911 calls reporting a fire. The Oakhurst, Wanamassa and Neptune Fire Departments all also responded.

The first responding officers and firefighters located two active fires at the residence. The main fire was traveling up the south-east corner of the residence from the basement. The other was just inside a garage door on the opposite side of the residence. The garage fire was quickly extinguished; the main fire travelled up the siding and into the attic. Near the garage fire, police located a two-gallon red gasoline can with a melted spout. After learning from the defendant that he kept gasoline cans in the shed, Officer Kevin Redmond and Sergeant Jeffrey Malone went to the shed and observed both an open space in a line of gasoline cans that could fit the two-gallon can and wet boot prints on decorative stones leading to the shed.

Police also located several surveillance cameras mounted at various spots outside the residence, including around the garage and driveway. Because the presence of the partially-melted gasoline can led officers and fire officials to reasonably believe that the fire was "suspicious" and intentionally set, Officer Brenden Bernhard approached defendant and his family, who were waiting a safe distance outside the residence, and inquired about the surveillance cameras. Officer Bernhard first asked where the surveillance camera video was stored. While defendant replied, "um," his daughter, who was standing next to defendant, did respond to the officer's question, stating that it was in the garage. When asked for a more specific location, defendant again responded, "um," while the daughter informed the officer that it was located, "Up to and to the left." Defendant was more talkative regarding whether the surveillance cameras worked, telling Officer Bernhard that while they were "running" he had been having "problems" with the system.

Officer David Marino entered the garage and retrieved the DVR system associated with the surveillance cameras. Officer Marino then secured the system – a Q-See, 8-channel H.264 DVR model QT428, serial number QT4281105092619 – in his patrol vehicle while fire fighting and fire investigation activity continued at defendant's residence.

At approximately 11:37 a.m., Detective Captain Brian Weisbrot of the Monmouth County Prosecutor's Office and Detective Christopher Brady of the Ocean Township Police Department spoke with the defendant at a neighbor's house about his surveillance system and DVR. Defendant again questioned the reliability of the system, telling the detectives that due to issues with his Wi-Fi he was periodically turning off the recording system. Defendant could not recall if he had recently turned it off.

During this conversation, the detectives asked defendant if he would be willing to provide his consent to a search of the DVR. Defendant agreed. Defendant's consent to this search was documented by way of a "Consent to Search" form, which the defendant signed to memorialize his consent; the detectives signed as witnesses. The form informed defendant of his rights in relation to this search:

1. I have the right to refuse to allow police to conduct the search.

2. I have the right to revoke my consent to search at anytime and may stop the search at anytime.

3. I have the right to be present while the search is conducted.

Pa1. Defendant acknowledged via his initials that he understood these rights and that he waived his right to be present for the search.

By way of his initials and signature, defendant also acknowledged the following:

> I authorize the police officers to remove and retain any items of evidential value which they consider pertinent to their investigation. I understand that I will be given a receipt for anything which is taken as evidence by the police.
>
> I have given this permission voluntarily of my own free will without coercion, fear or threat.

Pa1.

Defendant's request for the suppression of the warrantless seizure and search of the DVR should be denied. Contrary to defendant's current suggestion, what has been described above, and what will be explained in more detail in the testimony to be presented to this Court, was a lawful warrantless seizure and search. In securing the DVR during the fire and obtaining defendant's consent for its later search, the responding officers acted in accordance with decades of supportive precedent. The officers' conduct did not offended either the United States or New Jersey Constitutions. This Court should affirm the validity of the officers' seizure and search by denying defendant's motion for the reasons and authorities that follow.

Exigent circumstances "excuse[s] the need for the police to obtain a warrant," "allow[ing] officers to enter a home without a warrant," "when [they] have an 'objectively reasonable basis to believe that prompt action is needed to meet an imminent danger.'" State v. Miranda, 253 N.J. 461, 480 (2023) (quoting State v. Hemenway, 239 N.J. 111, 126 (2019)); Caniglia v. Strom, 593 U.S. 194, 204-05 (2021) (Kavanaugh, J., concurring). To successfully invoke exigent circumstances, the State "must prove by a

preponderance of the evidence that (1) the search was premised on probable cause and (2) law enforcement acted in an objectively reasonable manner to meet an exigency that did not permit time to secure a warrant." State v. Manning, 240 N.J. 308, 333 (2020).

"[W]hat constitutes an objectively reasonable response to an exigency" "is not susceptible to a precise definition because the unique facts of each case determines whether the need to act without delay is imperative." Ibid. "Nonetheless, [our Court has] identified a non-exclusive set of factors to be considered in the court's inquiry:"

> (1) the seriousness of the crime under investigation,
>
> (2) the urgency of the situation faced by the officers,
>
> (3) the time it would have taken to secure a warrant,
>
> (4) the threat that evidence would be destroyed or lost or people would be endangered unless immediate action was taken,
>
> (5) information that the suspect was armed and posed an imminent danger,
>
> (6) the strength or weakness of the probable cause relating to the item to be searched or seized.

Id. at 333-24; Miranda, 253 N.J. at 481.

Despite acknowledging that the exigent circumstances analysis is "fact[] sensitive," our Court has also recognized that certain facts are essentially per se exigent: "searches related to bomb threats, active shootings, and child abductions." Manning, 240 N.J. at 334 (quoting Riley v. California, 573 U.S.

373, 402 (2014)). Relevant here, the United States Supreme Court has for decades recognized as exemplary of sufficient exigent circumstances to justify a warrantless entry and search, "to fight a fire and investigate its cause." Caniglia, 593 U.S. at 204-05 (Kavanaugh, J. concurring); Bringham City v. Stuart, 547 U.S. 398, (2006) ("We have held, for example, that law enforcement officers may make a warrantless entry onto private property to fight a fire and investigate its cause").

The Court first recognized the inescapable exigency of both firefighting and investigating the cause of a fire almost 50 years ago in Michigan v. Tyler, 436 U.S. 499, 509-10 (1978). See also Stuart, 547 U.S. at 403 (citing to Tyler with approval); Caniglia, 593 U.S. at 205 (Kavanaugh, J. concurring) (same). As to firefighting, the U.S. Supreme Court noted that,

> A burning building clearly presents an exigency of sufficient proportions to render a warrantless entry 'reasonable.' Indeed, it would defy reason to suppose that firemen must secure a warrant or consent before entering a burning structure to put out the blaze. And once in a building for this purpose, firefighters may seize evidence of arson that is in plain view.

Tyler, 436 U.S. at 509. The Court also recognized that this exigency is not extinguished once the fire is:

> [The Michigan Supreme Court's] opinion may be read as holding that the exigency justifying a warrantless entry to fight a fire ends, and the need to get a warrant begins, with the dousing of the last flame … We think this view of the firefighting function is unrealistically narrow, however. Fire officials are charged not only with extinguishing fires, but with finding their causes. … Immediate investigation may also be necessary to preserve evidence from intentional or accidental destruction. And, of course, the sooner the officials complete their duties, the less will

> be their subsequent interference with the privacy and the recovery efforts of the victims. For these reasons, officials need no warrant to remain in a building for a reasonable time to investigate the cause of a blaze after it has been extinguished. And if the warrantless entry to put out the fire and determine its cause is constitutional, the warrantless seizure of evidence while inspecting the premises for these purposes also is constitutional.

Id. at 509-10 (emphasis added).

The findings of the Tyler Court unquestionably apply[1] to the officers' warrantless entry into the defendant's garage in November 2018 and establish sufficient exigent circumstances justifying the same. It is indisputable that the officers possessed sufficient probable cause to believe that the fire to which they and fire officials had responded was intentionally set and, therefore, criminal. Police had already located a gasoline can near the garage fire. Gasoline is, of course, a well known accelerant associated with intentionally set fires. The physical state of the gasoline can, with its partially melted spout, along with the discovery of its removal from the residence's shed and nearby wet boot prints, further connected it to the fires active at the time of emergency services' arrival at the residence. That the fire started in the early

[1] The State acknowledges the fire-specific cases upon which it relies are from the United States Supreme Court and that our Court can and, on occasion does, diverge from the holding of its federal counterpart, particularly in areas of search and seizure jurisprudence. See State v. Witt, 223 N.J. 409, 431-34, 447 (2015). The State submits that exigent circumstances is not one of these occasions of divergence. Not only are the very examples of essentially per se exigency listed by our Court in Manning, 240 N.J. at 333-34, for the warrantless acquisition of cell site location information were pulled directly from the United State Supreme Court's opinion in Riley, 573 U.S. at 402, but our courts have specifically relied upon and approved of Tyler, see State v. O'Donnell, 408 N.J. Super. 177, 183-85 (App. Div.), aff'd, 203 N.J. 160, 161 (2010).

morning hours, while the family was sleeping, further served to rule out any possibilities of an accidental gasoline fire and provided the needed reasonable, well-grounded basis to believe that the fire was criminal and that an arson investigation needed to be conducted. See State v. Chippero, 201 N.J. 14, 26 (2009) (defining probable cause).

Police also had probable cause to believe that evidence of the arson could be located in the DVR that held the video recordings for the several surveillance cameras positioned around the exterior of the defendant's residence, particularly those around the area of the garage. Police had every reason to believe that these cameras could have documented the arsonist as he moved around the exterior of the residence to secure the gasoline can from the shed, enter and exit the residence, and set fire to the residence, garage, etc. Defendant's stated uncertainty about the working order of the DVR could not diminish this probable cause.

That the residence in which this DVR was kept was an active fire scene and the scene of an arson whose cause needed to be quickly investigated provided the officers with the same, sufficient exigent circumstances present in Tyler and recognized by the United States Supreme Court for the last five decades. The officers and fire officials on-scene were concurrently engaged in multiple tasks necessary to address this ongoing emergency: they suppressed and extinguished the residence fire, looked to establish the fire's cause, secured the safety of the defendant's family and neighbors, and sought out and obtained medical treatment for the injured. Neither the law in this State or this Country required the officers to diverge from these tasks to secure a warrant before entering the garage to secure the DVR and the evidence it contained.

While the garage and DVR were, at the time of seizure safe, the uncertainty of fires, fire suppression activities, and the continued structural integrity of the residence made any delay to obtain a search warrant legally intolerable. See Tyler, 436 U.S. at 509-10; Stuart, 547 U.S. at 403; Caniglia, 593 U.S. at 205 (Kavanaugh, J. concurring). Thus, the officers' seizure of the DVR, while warrantless, was lawful.

Likewise, the defendant's consent to the search of the contents of the DVR obviated any need to obtain a search warrant and rendered the later search pursuant to this consent lawful. Consent to a search is a well-recognized exception to the requirements of the Fourth Amendment. State v. Farmer, 366 N.J. Super. 307, 313 (App. Div.), certif. denied, 180 N.J. 456 (2004); State v. Maristany, 133 N.J. 299, 305 (1993); State v. Hagans, 233 N.J. 30, 39 (2018). In fact, "consent searches are considered a 'legitimate aspect of effective police activity.'" State v. Domicz, 188 N.J. 285, 305 (2006)(quoting Schneckloth v. Bustamonte, 412 U.S. 218, 228 (1973)).

New Jersey law regarding consent searches is "predicated on the principle that informed and voluntary consent is not coerced consent." Domicz, 188 N.J. at 308-09. "The Constitution protects against ... coerced waivers of constitutional rights. It does not disallow voluntary cooperation with the police." Ibid. (citing State v. Johnson, 68 N.J. 349 (1975)). Thus, valid consent "contemplates the exercise of choice, 'and choice entails the opportunity to evaluate the available options.'" State v. Chapman, 332 N.J. Super. 452, 466 (App. Div. 2000)(quoting Johnson, 68 N.J. at 355 (Schreiber, J., concurring)); see also State v. King, 44 N.J. 346, 352 (1965). "The burden is on the State to show that the individual giving consent knew that he ... 'had

a choice in the matter.'" State v. Carty, 170 N.J. 632, 639 (2002)(quoting Johnson, 68 N.J. at 354).

Rather than require the giving of a plethora of pre-consent advisements, to demonstrate the validity of consent the State must only demonstrate "that the consent was voluntary, an essential element of which is knowledge of the right to refuse consent." Johnson, 68 N.J. at 354; State v. Birkenmeier, 185 N.J. 552, 555 (2006). The State must demonstrate that the individual giving consent knew he had the right to refuse consent: "One cannot be held to have waived a right if he is unaware of its existence." Johnson, 68 N.J. at 354.

New Jersey courts have consistently found a defendant's consent voluntary and knowing and, therefore, valid where the police officer read a consent form to the defendant and the defendant signed the form. State v. Chapman, 332 N.J. Super. 452, 467 (App. Div. 2000); State v. Oberlton, 262 N.J. Super. 204, 211 (Law Div. 1992); State v. Jackson, 268 N.J. Super. 194, 204 (Law Div. 1993); State v. White, 305 N.J. Super. 322, 332-33 (App. Div. 1997). Without any evidence of coercion, the reading and signing of a consent form provides sufficient evidence of voluntariness and knowledge of one's rights to validate a warrantless search on the basis consent. Ibid.

This is so because coercion requires more than just the obvious difficulties of being approached by the police; it requires police misconduct or misrepresentation. State v. LaDuca, 89 N.J. Super. 159 (App. Div. 1965); State v. Dolly, 255 N.J. Super. 278 (App. Div. 1991); State v. Smith, 155 N.J. 83, 101, cert. denied, 525 U.S. 1033 (1998). New Jersey law distinguishes between the natural "compulsion" felt "whenever a police

officer makes a request," and the inherent "difficult[y] [of such a] situation," from "police misconduct involving the violation of constitutional rights" or mere acquiescence to an unjustified "show of authority." Domicz, 188 N.J. at 307; King, 44 N.J. at 353; Chapman, 332 N.J. Super. at 467; Smith, 155 N.J. at 101; State v. Speid, 255 N.J. Super. 398, 405 (Law Div. 1992). See also Robbins v. MacKenzie, 364 F.2d 45, 50 (1st Cir.), cert. denied, 385 U.S. 913 (1966)("Bowing to events, even if one is not happy about them, is not the same thing as being coerced").

Factors identified as potentially indicating coercion include:

> (1) that consent was made by an individual already arrested; (2) that consent was obtained despite a denial of guilt; (3) that consent was obtained only after the accused had refused initial requests for consent to search; (4) that consent was given where the subsequent search resulted in a seizure of contraband which the accused must have known would be discovered; [and] (5) that consent was given while the defendant was handcuffed.

Hagans, 233 N.J. at 39 (quoting King, 44 N.J. at 352-53). Factors that indicate voluntariness include: "(1) that consent was given where the accused had reason to believe that the police would find no contraband; (2) that the defendant admitted his guilt before consent; [and] (3) that the defendant affirmatively assisted the police officers." Ibid.

These eight factors are not "commandments," but "guideposts to aid a trial judge in arriving at his conclusion." Id. at 40. "The objective of a court undertaking a voluntariness analysis is to scrutinize 'the totality of the particular circumstances of the case.'" Id. at 42 (quoting King, 44 N.J. at 353). "[T]he existence or absence of one of more of the factors mentioned ... may be of great significance in the circumstances of one case, yet be of slight

significance in another." King, 44 N.J. at 353; Hagans, 233 N.J. at 40.

The totality of the circumstances present here demonstrate that defendant's consent to the search of the DVR was knowing and voluntary and, therefore, lawful. At the time the detectives sought defendant's consent, defendant was not under arrest, was not handcuffed, and was not in police custody. At that time, he was being treated not as a suspect, but as a victim. Moreover, the detectives fully explained the rights surrounding consent searches to the defendant during the consent process. By way of the consent to search form, detectives ensured that defendant knew that he had the right to refuse consent.

Defendant knew he had a choice in the matter and elected to exercise his choice in favor of cooperating with police and consenting to the search. Whether that decision was premised upon a belief that he had prevented incriminating evidence from being recorded by turning off the DVR and concocting a plausible explanation for doing so and/or a desire to don the façade of a cooperative victim only further serves to establish the validity of defendant's consent.

Defendant concluded his completion of the consent to search form by acknowledging that his consent was provided "voluntarily of [his] own free will without coercion, fear or threat." Pa1. This Court can and should believe these assurances defendant provided on November 20, 2018 – before his was arrested, charged, indicted, and about to be tried for the murders of his brother, his brother's family, and the arson of the home in which his own wife and daughters slept. This Court can and should find defendant's consent valid and the search of the DVR conducted pursuant to this consent not subject to

suppression. This Court can and should deny defendant's motion to suppress evidence seized without a warrant.

Respectfully submitted,

RAYMOND S. SANTIAGO
MONMOUTH COUNTY PROSECUTOR

/s/ Monica do Outeiro

By: Christopher J. Decker, 038272003
Deputy First Assistant Prosecutor and

Nicole D. Wallace, 037582008
Trial Team Leader
Assistant Prosecutor
Of Counsel and

Monica do Outeiro, 041202006
Assistant Prosecutor
Director, Appellate Section
On the Letter

c Monika Mastellone, A.D.P.D.