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June 5, 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. 18-4915
Motion to Preclude Arson Expert
Returnable: June 30, 2025

Dear Judge Lemieux:

The State is in receipt of the above-captioned motion, by way of which defendant seeks to preclude testimony from the State's arson expert, Detective Joseph Cordoma. In support of this request, defendant levels several, often contradictory, attacks against Detective Cordoma's qualifications, methodologies, and conclusions. The State submits that Detective Cordoma, who engaged in a team approach to the origin and cause determinations, is fully qualified to offer opinions regarding the fire at 15 Willow Brook Road in Colts Neck in the early morning hours of November 20, 2018.

While the State does not believe that defendant's attacks should persuade this Court to grant his request for preclusion of the expert testimony, the State does believe that it would be appropriate for this Court to order a N.J.R.E. 104 hearing. As discussed infra, the State submits that the guidance offered by Judge Ostrer in State v. Ordonez-Lima, 2024 N.J. Super. Unpub. LEXIS 3663 (Law Div. 2024), will be helpful to a determination that the request for preclusion should be denied. Exhibit 1.

Prior to addressing the legal analysis, the State would note that, as this Court is aware, defendant recently supplied an expert report from Christopher Wood of FireLink LLC. Defendant now argues that Detective Joseph Cordoma does not possess sufficient expertise to be an expert in fire investigation; interestingly, however, Mr. Wood, who has been “a Certified Fire and Explosion Investigator for 30 years” ultimately agrees with the Origin and Cause determinations of Detective Cordoma. From the State’s review of Wood’s report, it appears that the only true criticism of Detective Cordoma’s opinion lies with his conclusion that the fire was slow-burning. In this regard, however, Wood simply appears to state that this fire was either slow-burning or just the opposite. The State submits that inherent in Wood’s agreement with regard to origin and cause is the fact that Cordoma must be qualified to offer the same Origin and Cause determination as someone with 30 years of fire-investigation experience.

Defendant also makes a particularly questionable argument pertaining to Detective Cordoma’s “failure to mitigate exposure to information that would improperly influence his opinion.” Db7. This is, unlike with the motion to bar the ballistics testimony, comes without a Cognitive Bias expert. Moreover, this assertion is interesting in light of the recommendations of the OSAC report and the premise that “investigators are charged with casting a wide net – they may not know at the time of the scene investigation what will be important data and therefore should document, within reason, all data related to the fire scene and specific incident.” OSAC report at p. 67. Thankfully, Detective Cordoma and others did just that, enabling Mr. Wood the benefit of that documentation years later. On the next page, defendant cites to the OSAC report which indicates that “expectation bias arises when investigators reach premature conclusions. By not collecting and examining all of the relevant data, or by relying on irrelevant data, an investigator can form invalid conclusions.” Db7. And, then they state the same thing in a different way, “[t]o mitigate

bias, the current best practice requires that investigations ‘consider only data that are relevant to the current task.’” Ibid. The defendant attempts to paint a picture that Cordoma was biased by information he learned during this investigation. The defense, however, fails to actually point to what is relevant and what is irrelevant. That State submits that in establishing a timeline, Detective Cordoma and others had to take into account information that was relevant to that timeline. For instance, the Wyze camera video of a person outside the Colts Neck home at approximately 3:00 a.m. when the power is disabled to the home, is certainly relevant data to be considered by a fire investigator. Should that relevant data be ignored in determining when the fire began? Should they ignore that the two Caneiro children failed to show up at the bus stop that morning? The State submits that ignoring this data is contrary to all logic, as well as the guiding principles of fire investigation, the OSAC report and NFPA 921 and 1033.

Defendant continues to cite portions of the OSAC report, then leave out relevant parts that follow. As stated above, they discuss bias mitigation by considering “only data relevant to the current task,” yet fail to mention the chart that follows (Table 6-2, OSAC report, p. 93) which lists data sources which “usually do not include task irrelevant data” and those that “may potentially include task irrelevant data.” The information listed under task relevant data includes essentially that which Detective Cordoma utilized – firefighter observations; witness observations and photos/video relevant to the fire and building contents; occupancy; weather data; pre-fire activities on the scene; ignitable liquid location; physical condition of the fire scene; utilities; victim injuries; security, detection and alarm systems, etc. See Exhibit 2.

The defense argues against itself again when they state that “[i]t is also recommended that technical reviews of work product should be performed, a procedure that seems to not have occurred in this case.” Db8, citing Exhibit E at 92; yet, in the very next

paragraph they argue that “he consulted with at least 11 other people before writing his report.” They continue that he had information including “the suspected timeline of events of that day” that “he did not need.” (Emphasis added). This appears to be yet another example of selective use of the OSAC report, which specifically discusses how “non-scene data is often critical to fire investigations” and how “this non-scene data has a role in defining the timeline of the incident, identifying the area of origin, documenting the growth and spread of the fire, and in providing causation information.” OSAC at xviii. (Emphasis added).

The OSAC report explains that all relevant information should be considered. The report indicates, for instance, that “[i]n many instances, a canvas of a particular neighborhood will be undertaken. This effort is an attempt to speak with witnesses who have not yet come forward or previously been contacted by investigators.” OSAC, p.77. Given the seemingly criminal nature of this event from the beginning (Keith Caneiro’s body was quickly found deceased with gunshot wounds on the front lawn of the home), witnesses/neighboring homeowners were spoken to by police officers. This information, as acknowledged by the OSAC report can be used to “gather more germane information about the fire’s origin and spread, as well as its timeline.” Id. at 78. In this case, despite the fire being reported at approximately 12:30 p.m., police learned from a neighbor that the two Caneiro children never came to the bus stop that morning. The State submits that information like this is wholly relevant to the consideration of the timeline relating to the fire.

The State would further submit that NFPA 921 and 1033 also discuss “non-scene data.” It states: “Determination of the origin of the fire involves the coordination of information derived from one or more of the following: (1) witness information and/or electronic data. The analysis of observations reported by persons who witnessed the fire or

were aware of conditions present at the time of the fire as well as the analysis of electronic data including but not limited to security camera footage, alarm system activation, or other such data recorded in and around the time of the fire event..." NFPA 921, §18.1.2.

Circling back to the criticism that Cordoma consulted with "at least 11 other people before writing his report," the State would note that the OSAC report indicates specifically that "[a] team approach to a fire investigation is more effective than a lone investigator. The need for a team approach has three complimentary aspects: 1) safety, 2) the diversity of technical skills required, and 3) the role of collegial interaction. Despite the edicts of OSAC and the NFPA 921 and 1033, defendant criticizes Detective Cordoma's use of hearsay information in coming to his ultimate conclusions. The State submits that Detective Cordoma clearly lays out the investigative team's efforts in his report. This included individuals from the Monmouth County Fire Marshal's Office, as well as the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and others. The State submits that there is nothing untoward or unacceptable with Detective Cordoma's utilization of opinions gleaned from other experts, including ATF Electrical Engineer Michael Abraham. To this end, the State submits that N.J.R.E. 703 permits an expert to rely on the opinions of others only "[i]f of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject." See Ryan v. KDI Sylvan Pools, Inc., 121 N.J. 276, 289 (1990). This very fact was addressed recently by Judge Ostrer, J.A.D. in an unpublished Law Division case. See State v. Ordonez-Lima, 2024 N.J. Super. Unpub. LEXIS 3663 (Decided March 21, 2024).

In Ordonez-Lima, similar to the instant case, the defense, armed with an expert witness, filed a motion to preclude the detective's causation opinion on the ground that the detective's methodology violated reliable standards for scientific analysis of fire causation set forth in NFPA 921 – Guide for Fire and Explosion (2021). The State submits that this

Court should follow suit and hold a N.J.R.E. 104 evidentiary hearing like Judge Ostrer did in Ordonez-Lima. The Court ultimately held that (1) the detective inappropriately relied on another investigator's net opinion excluding an electrical cause of the fire and that (2) he applied a "negative corpus" because he relied on speculation instead of supporting evidence for his conclusion the fire was "incendiary," which NFPA 921 defines as a fire "intentionally ignited in an area or under circumstances where and when there should not be a fire." Id. at *3; citing NFPA 921, §3.3.121. The State submits that this opinion should be viewed as quite helpful to this Court; albeit to reach a different result, in light of the divergence of the facts and circumstances.

With respect to the hearsay argument made by the defense, the State would note that, as stated above, the Court in Ordonez-Lima undertook a hearsay analysis with respect to the detective's testimony. The Court noted that under N.J.R.E. 703, the court must determine whether the State has demonstrated that the detective has "applied his... scientifically recognized methodology in the way that others in the field practice the methodology." Id. at *8, quoting In re Accutane Litigation, 234 N.J. 340, 399-400 (2018). The defense expert, found to be highly qualified and credible by the Court, opined that the State's expert lacked a scientifically reliable basis for excluding an electrical cause of the fire. Id. at *16. The State submits that Detective Cordoma certainly does not lack that basis in the instant case. Unlike in Ordonez-Lima, Detective Cordoma utilized the expertise of ATF Electrical Engineer Michael Abraham who, in conjunction with Cordoma and other members of the investigative team, ruled out electrical causes of the fire and specifically found that "the condition of the bypass meter would not allow for utility line powers to the structure." Exhibit 3. He also ruled out "solar generated power," "on-site generated power to the structure" and indicated "that the severed fiber optic connection to the Verizon ONT would not allow for connected telecommunications and internet enabled devices to

communicate.” See Exhibit 3 at 3 of 3. This, as the Court knows, is corroborated by other evidence presented previously to this Court by way of testimony from Lt. Petruzzielo and the Wyze camera footage from 15 Willow Brook Road. The State submits that this clearly highlights the importance of other non-fire related evidence which must be considered under OSAC and NFPA 921 and 1033. Clearly, and in line with Judge Ostrer’s opinion, Detective Cordoma’s reliance on scientific testing and conclusions from ATF Engineer Abraham is firmly within that which N.J.R.E. 703 permits. This is not to mention the fact that Abraham can testify to his contribution to the investigative efforts in determining cause and origin and certainly provides further scientific support to the conclusion that this fire was slow-burning. See Exhibit 4.

The facts also differ in another material way. The detective in Ordonez-Lima, “was not part of the initial investigative team on scene. Rather he was tasked with reviewing the data others collected and independently analyzing the fire’s origin and cause.” Id. at 10. Cordoma was on scene shortly after being requested to respond by his supervisor in the MCPO Forensics Unit at 1:00 p.m. on November 20, 2018. As such, Cordoma had the benefit of making first-hand observations of the fire. He laid out in his twenty page report his reliance upon NFPA 921 and how he followed the Scientific Methodology as defined therein (Seven Steps). Unlike the detective in Ordonez-Lima, Detective Cordoma did not solely rely on the “onscene inspection of wiring” which the detective acknowledged was “at best an incomplete method of testing for an electrical cause.” Id. at *18. The Court, in this regard, held that the State failed to demonstrate that [the detective] properly applied a scientifically reliable methodology in eliminating the possibility of an electrical cause.” Id. at *19. In the instant case, unlike in Ordonez-Lima, Detective Cordoma relied upon another’s opinion which was “...of the type reasonably relied upon by experts in the

particular field in forming opinions or inferences upon the subject," given Abraham's experience as a Forensic Electrical Engineer with the ATF. See N.J.R.E. 703.

The State submits that Detective Cordoma's testimony will properly highlight his proper use of the NFPA 921 and governing fire investigation principles. The Ordonez-Lima Court ultimately held that they were persuaded by the defense expert's analysis in determining that the detective reached his conclusion "based on speculation, rather than supporting evidence." Id. at 24-26. It will be clear that Detective Cordoma did nothing of the sort in this case. Additionally, the lack of evidence at the fire scene in Ordonez-Lima cannot be compared to that uncovered at 15 Willow Brook.

The State also would highlight that the Ordonez-Lima decision contains significant discussion of what other non-fire evidence existed, including video. This fact merely highlights the recognition of the value of this type of evidence in origin and cause investigations. Ultimately, the detective was allowed to testify regarding the origin of the fire (not disputed by the defense expert), but was not able to testify that the fire was incendiary. Id. at * 30-31. He was not allowed to testify that all accidental causes had been eliminated, "as that conclusion rests upon another person's non-scientifically reliable opinion excluding a possible electrical cause of the fire." The instant case differs significantly in that regard, particularly in light of Michael Abraham's electrical analysis.

Lastly, the State submits that contrary to the Ordonez-Lima case, the defense expert in this case, Mr. Wood, does not dispute Detective Cordoma's conclusion regarding origin and cause of the fire. He seems to simply take issue with the detective's conclusion regarding the slow-burning nature of the fire. This is far different than that which was before the Court in Ordonez-Lima, where the Court clearly have significantly more weight to the testimony of the defense expert.

While the State fully expects that the testimony will ultimately support Detective Cordoma's expertise under N.J.R.E. 702 and Olenowoski and his ability to reach certain conclusions, it must be stated that Christopher Wood's report casting light on one of Cordoma's conclusions, makes clear that, despite being provided with significant materials by the defense, he only considered the question posed to him, "Solely from the physical, fire scene evidence, can the fire duration be determined to be of a long duration, on the order of many hours, versus a short duration, for example on the order of an hour or less?" Wood report at 1.

Quite candidly, Mr. Wood acknowledges that he failed to consider anything but the "physical, fire scene evidence." The State submits that, on its face, this is contrary to NFPA 921 and the aforementioned OSAC report. As stated previously above, the OSAC report clearly recognizes how this non-scene data is "critical" to fire investigations. This would certainly include information regarding the utilities and also evidence regarding timing of the loss of power (including but not limited to the text messages sent by Keith Caneiro to the defendant regarding his power loss at 3:14, 3:15, 3:17 and 3:18 a.m.). Wood also specifically indicates that "no other electronic data, such as recording video cameras have been reported." Report at 3. One would suspect that the video depicting a person outside the garage in the area of the electric panel at close to 3:00 a.m. might have been something he would have wanted to consider, particularly in light of the power loss that ensued. Despite having not considered any of this information, Mr. Wood still acknowledges that "while a slow- or smoldering-fire may have occurred, that determination cannot be made based upon the fire patterns." The State submits that this, simply, explains why fire investigators are expected to evaluate "critical" non-scene evidence.

The State does not believe that defendant's attacks, his own disagreement with the detective's findings and not N.J.R.E. 701 et seq., the wealth of precedent on expert

testimony generally and arson testimony specifically, or the institutional document from the NFPA 921 upon which he relies, should persuade this Court to grant his request for preclusion. However, the State does believe that, for the Court to get to the conclusion - that defendant's request for preclusion should be denied, a N.J.R.E. 104 hearing is needed. See, e.g., Ordonez-Lima, *supra*. At this hearing, the State will present the facts the Court needs to find the requirements for the admission of expert testimony met by Detective Cordoma. The State respectfully reserves the right to brief any lingering issues that the Court may have after being fully informed of the necessary facts at the hearing.

Respectfully submitted,

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