

STATE OF MICHIGAN
IN THE 67TH DISTRICT COURT FOR THE COUNTY OF GENESEE

THE PEOPLE OF THE STATE OF MICHIGAN

CASE NO. 17T-1355-FY

V.

NICOLAS LYON

Defendant.

PRELIMINARY EXAMINATION VOLUME XXVI
BEFORE THE HONORABLE DAVID J. GOGGINS, DISTRICT JUDGE
Flint, Michigan - Wednesday, August 20, 2018

APPEARANCES:

For the People:

MR. TODD FLOOD (P58555)
Michigan Department of Attorney General
Office of Special Counsel
Special Assistant Attorney General
155 West Congress, Suite 603
Detroit, Michigan 48226
(248) 547-1032

MR. PAUL STABLEIN (P42544)
Michigan Department of Attorney General
Office of Special Counsel
Special Assistant Attorney General
155 West Congress, Suite 603
Detroit, Michigan 48226
(248) 547-1032

MS. ALEX EDELEIN (P80971)
Office of Special Counsel
Special Assistant Attorney General
155 West Congress, Suite 603
Detroit, Michigan 48226
(248) 547-1032

For the Defendant:

MR. JOHN J. BURSCH (P57679)
Bursch Law
9339 Cherry Valley Avenue, S.E. Unit 78
Caledonia, Michigan 49316-0004
(616) 450-4235

MR. CHIP CHAMBERLAIN (P33536)
Wiley & Chamberlain
300 Ottawa Avenue NW, Suite 810
Grand Rapids, Michigan 49503
(616) 458-2212

MS. BRITT COBB (P69556)
Willey & Chamberlain
300 Ottawa Avenue NW, Suite 810
Grand Rapids, Michigan 49503
(616) 458-2212

MR. LARRY WILLEY (P28870)
Willey & Chamberlain
300 Ottawa Avenue NW, Suite 810
Grand Rapids, Michigan 49503
(616) 458-2212

RECORDED BY: Janet M. Driesen (CER7296)
Certified Electronic Recorder
(810) 659-5659

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1 Flint, Michigan

2 Wednesday, August 20th, 2018, at 1:43 p.m.

3 THE COURT: We're on the record with People versus
4 Nicolas Lyon. I've had an opportunity to review all of my
5 notes on this matter as well as the transcripts and the
6 Exhibits that have been admitted in this matter for
7 preliminary examination. First of all, Prosecution has charged
8 Mr. Lyon with the following offenses: involuntary
9 manslaughter, count one. That is regarding Robert Skidmore;
10 involuntary manslaughter, count two, involving John Snyder;
11 count three, misconduct in office; count four, willful neglect
12 of duty in office and we've had significant discussions and
13 order from the this Court regarding count four which is just a
14 misdemeanor charge. I'm not going to address the misdemeanor
15 charge. Motion to dismiss that charge I denied that motion.
16 It's alleged to have, these three charges, actually all four
17 are alleged to have occurred from 2014 to the present in the
18 city of Flint, Genesee County, Michigan. There was testimony
19 from Tim Becker, who at the time of this incident, alleged
20 incident, between 2014 was with Michigan Department of Health
21 and Human Services. The name had been changed but he was in
22 direct employment with that office under Mr. Lyon's
23 employment. Find through his testimony Exhibit #1 was admitted
24 and in part it questioned from Mr. Becker to another
25 Department of Community Health employee, what do we know about

1 this in numbers of Legionnaire's Disease in Flint? This was
2 dated January 28, 2015. Based upon the testimony from Mr.
3 Becker it was apparent that there was talk with regard to the
4 Legionnaire's Disease issues that were happening in Flint.
5 There was further testimony from Mr. Becker that there's
6 apparent there was a Legionella increase in Flint. It
7 coincided at least on an evidentiary level in some degree with
8 the water supply chain in Flint with argument that there was
9 not enough evidence at the time but there was discussions. It
10 was his further testimony that there was questioning with
11 regard to how many cases of Legionnaire's Disease in the Flint
12 area. It was his testimony it could easily be found out
13 through the Epidemiologists. It was in fact relatively easy
14 and simple to call and figure out how to get that information,
15 what the numbers were in the Flint area. There was further
16 testimony from this witness that the Michigan Department of
17 Health and Human Services has the ability to find out
18 information regarding how many deaths at least within an area
19 and those associated with Legionella or illnesses in the Flint
20 area and this was an ability that Mr. Lyon had to find out
21 that information through his office. There was further
22 testimony from this witness that there were questions about
23 the general departments in the Flint area, local departments
24 in the Flint area being frustrated with responses that they
25 were receiving. Local Health Department had to at one point

1 FOIA information for their own city to get information. They
2 were having a difficult time in receiving information on the
3 area of Legionella outbreaks in the area. It's clear through
4 MCLA 33 -- I'm sorry, 333.2221 the Department that Mr. Lyon
5 was directing and still is directing, Michigan Department of
6 Health and Human Services, that they had full control of
7 supervision and interest in the health and life of the people
8 of the state. He has full control to implement and enforce
9 laws which fall under his responsibility and is invested in
10 this Department, that being the Michigan Department of Health
11 and Human Services. He also has power to collect and utilize
12 vital health statistics and provide epidemiological and other
13 research studies for the purpose of protecting the public
14 health. Also has the power and obligations to make
15 investigations and inquiries into causes of disease and
16 especially epidemics, causes of morbidity and mortality,
17 causes, prevention and control of environmental health
18 hazards, nuisances, and sources of illness. Also has the
19 obligations to implement and plan and evaluate health,
20 education for the area which is not really relevant to his
21 particular case but, again, is based upon the statute and all
22 of the testimony in its entirety, I find that Mr. Lyon has
23 significant powers and obligations to the State of Michigan,
24 to the public in general, to supervise and implement and
25 enforce those laws for the health and life and safety of the

1 public in general and specifically with this case, the Genesee
2 County and particularly city of Flint. This witness further
3 testified in Exhibit (sic), several other Exhibits were
4 admitted. Again, that the obligations for Mr. Lyon was to
5 protect the health and citizens of Michigan, in particular the
6 Flint area and also involving the two victims, alleged in the
7 complaints, again, Mr. Robert Skidmore and Mr. John Snyder.
8 It was his testimony further and, again, this is Tim Becker,
9 that there was no public notice that he was aware of during
10 2015 period at the time. Through further testimony, PEX#8 was
11 admitted. That being an Epi-Curve graph for the cases of
12 Legionellosis in the Flint area. It's clear by testimony as
13 well as the Exhibits that have been admitted that there was an
14 outbreak for Legionella in 2014 shown by the Epi-Curve graphs.
15 This particular witness, again, Mr. Becker, testified there
16 was a meeting in January of 2016. This information was being
17 passed around at this meeting, the Epi-graph curves. It was
18 his testimony that from what he observed it was a significant
19 increase in 2014. Three, what he testified to three to four
20 times more in 2014 and it was in his words, a light bulb
21 moment. Everyone at this point was anxious and was concerned
22 with an imminent threat. Further he said including Mr. Lyon at
23 this point based upon his observations of the Defendant at
24 this meeting. It was his feeling that he believed this was the
25 first time that the Defendant learned about the outbreak by

1 his reactions and shock to this information that was being
2 given at this meeting and in fact through several other
3 Exhibits in particular as well regarding the Legionella
4 outbreak there was testimony at one point there were forty-
5 five cases of Legionella during this period in 2014. There was
6 testimony with regard to exposures and non-exposures and
7 questioning which were indeed involved with Legionnaire's
8 Disease through Legionella bacteria. Again, this witness
9 further testified under examination that this January 11, 2016
10 (sic) meeting was the Aha moment. That there was a problem and
11 it needs to go to the Governor's office. It was this witness's
12 further testimony that some type of warning could have gone
13 out in 2015 if the numbers were known at the time for the
14 Flint area. Exhibit #11 that was admitted, the transcript
15 involving Mr. Lyon who was under oath at that hearing. The
16 hearing was April 25, 2016. Defendant said he learned of major
17 health concerns, these issues involving Legionella health
18 issues in particular in July of 2015. In fact he had, well,
19 strike that. Evidence based upon the totality of all of the
20 Exhibits and the transcript material it's evident to this
21 Court that the Defendant did learn of the outbreak in 2015
22 (sic). It should be noted that announcement was not made to
23 the general public until January 13, 2016. There was further
24 testimony from Tim Becker that he at this preliminary
25 examination he stated that does not take a lot of due

1 diligence if the data is available to discover an outbreak of
2 Legionella for that period in February and May of 2014.
3 There's testimony from Marcus Zervos, employed with, a medical
4 doctor employed with at the time of this Henry Ford Health
5 Systems. He was qualified as an expert in Infectious Diseases,
6 Epidemiology and Public Health. It was his testimony that he
7 was hired somewhere in February of 2016 to do work in the
8 Flint city Legionella issue. It was his testimony that most
9 plausible explanation for Legionella outbreak in Flint was the
10 change in the water supply and that that was the cause of
11 Legionella outbreak. It was his testimony further that there
12 were significant arguments with the Defendant in meetings
13 which involved the scope of investigations that were ongoing
14 after this later date, these in 2016. It was Doctor Zervos'
15 testimony that he was trying to impress that if the
16 investigation was not done properly or done soon that people
17 are going to still die if this was not done. At this, there
18 was a statement that Marcus Zervos, Doctor Zervos, had stated
19 that the Defendant had made at this meeting in response,
20 people are going to die of something. This witness testified
21 he was very upset with the Defendant's position. It was his
22 further testimony the goal was to do research for the safety
23 of lives. Further testified with regard to the Exhibit #8, the
24 Epi-Curve graph. It was his testimony that it was very
25 alarming, the data that it was showing. Further testified that

1 person much more likely to die of Legionella infection is a
2 compromised, compromised (sic) individual and that it was
3 reasonable to believe that others would die because of this
4 outbreak or potential outbreaks. It was his further testimony
5 that even lone case of hospital-acquired Legionella it was the
6 State health should be involved. Medical providers need to
7 know and the public notice should have, should go out to those
8 outside of those hospitals because the issue of symptoms comes
9 up and general public would have an idea to seek help. It was
10 his further testimony that reasonable, it was reasonable to
11 believe that Legionella outbreak would be back in 2015 from
12 the 2014 data because Legionella is more prevalent in the
13 summer months. The 2014 outbreak because of that could be
14 expected outbreak in the summer of 2015 if not addressed. It
15 was further his testimony that in January of 2015 if the, if
16 they had the information and didn't give public notice or
17 warning he was absolutely certain given what happened in 2014
18 there will be deaths in the summer of 2015. It was posing an
19 imminent risk of danger to health of the public. If nothing
20 was done there would be more cases. There was testimony as
21 well on how to kill Legionella bacteria in general from this
22 witness. It was his statements under oath that it was adequate
23 chlorination was important. That the department that Mr. Lyon
24 was directing, Health and Human Services, could find out what
25 chlorine levels were at the time of the outbreak. It was this

1 witness's further testimony that chlorine levels were low to
2 zero in the city of Flint in certain areas during the time of
3 this outbreak. Again, he testified that Legionella thrives in
4 warmer water or stagnation and that chlorine levels were
5 obtainable and would kill the Legionella bacteria. He also
6 testified that corrosion in the pipes would promote Legionella
7 growth. Again, these were in the Flint area. Went into
8 further detail on the effects on humans of Legionella. Stated
9 that or testified that the source is always water. It makes
10 its way into the lungs, replicates and spreads. In healthy
11 person may affect two to three percent of the population.
12 Immune compromised individuals up to 50% can cause untimely
13 death with respiratory failures. It was his testimony further
14 that 30 day mortality rate is what is used to sort through the
15 cause of deaths with regard to Legionnaire's Disease. It's the
16 time period used to at least investigate whether a death is
17 caused by Legionella infection. It was his further testimony,
18 Doctor Zervos, that within the first few weeks of an outbreak
19 there should have been notice to the medical community and
20 public community. It was his testimony that the Epi-Curve
21 still shows cases in January of 2015. Notice should have been
22 done to the community in the summer of 2015. There was still
23 cases involving Legionella during that period of time. It was
24 his testimony that what you would be looking for is the
25 numbers for, to do go down to baseline rate and stay down

1 through the next summer period. Did testify that in 2016 the
2 summer cases were lower, around twelve cases. It was much
3 better. Nonetheless, there were still gaps during that time
4 period, still cases involving Legionella during that period.
5 It was further testimony that vulnerable population, infants,
6 elderly, those with illnesses were most at risk. Did give
7 testimony with regard to proper testing for Legionella and
8 diagnosed usually by urine but can be done by sputum samples.
9 It was his testimony that it was critical to give notice
10 because the cold and flu symptoms similar to symptoms of
11 Legionella are present or likely present so it's not normally
12 tested for Legionella which was critical to those infected.
13 Again, there was further testimony that it was this witness's
14 concern that around May of 2016 he was still worried that
15 outbreak could continue into the summer because Legionella
16 again is increased during former months even though water
17 supply was switched back to Detroit water and chlorine levels
18 were increasing the concern still of Legionella in the system.
19 Witness's further testimony that notice should have included
20 going, provider, healthcare provider information, hospitals,
21 physicians, care providers, there was some testimony that some
22 of this had already occurred on some level but it was this
23 witness's testimony that notice should have gone out back in
24 2014 when the first outbreak had occurred to protect public
25 from these issues. Again, he further testified and reiterated

1 the fact that if hospitals were to see one case they need to
2 partner with Health Departments and start investigation right
3 within the first few weeks for the general public safety as
4 well. This witness testified that his impression of the
5 meeting in August of 2016 there was still, he was still
6 expressing concerns and that he was speechless with regard to
7 the way things were being handled or had been handled. It's
8 his testimony, Exhibit #18 was admitted as well from, again,
9 from Shannon Johnson with the Defendant's Department. That
10 particular Exhibit is dated October 13, 2014th (sic), I'm
11 sorry, 2014. It was suggesting that Ms. Johnson stated,
12 Shannon Johnson stated, I ran a five year Epi-Curve for six
13 counties, Saginaw, Shiawassee, Livingston, Oakland, Lapeer and
14 Tuscola surrounding Genesee and none of these counties are
15 experiencing an increase similar to what Genesee is seeing.
16 The other counties are at normal or below normal levels of
17 case counts for June to present and, again, this was sent
18 October 13, 2014. I spoke with Genesee County again today with
19 Epi Sharook. She told me they have mapped their case and found
20 that nearly all of them are within the city of Flint and on
21 municipal water. They also found that the majority of cases
22 are not occurring close to the treatment plant but farther
23 down the line. This would not be surprising since chlorination
24 and disinfection levels drop further away you get from the
25 treatment source. There was testimony from Corinne Miller.

1 Miller an employee at the time with Michigan Department of
2 Health and Human Services. She was Director of Bureau of
3 Disease Control, Prevention, Epidemiology. It was her
4 testimony that she became aware of health issues in Flint in
5 January 2015 of Legionnaire's Disease. Heard from her staff.
6 One particular person that she heard from was Jim Collins
7 there's a problem with outbreak of Legionnaire's in the
8 Genesee County area. She also testified that an outbreak is an
9 increase above normal with a disease that could be two cases
10 depending on the disease itself. It's her recollection that
11 there were approximately forty cases and there was a lack of
12 follow-up. She further testified that Legionella is a serious
13 disease. Usually in an outbreak you can expect ten percent to
14 die from it. She did testify that she knew there was an
15 emergency manager in place, didn't know who it was at that
16 time. She also testified that she obtained graphs January 28th
17 of she says 2015. Obtained graphs on data for outbreak. They
18 were obtained January, I'm sorry, January 27th, 2015 or January
19 28th, 2015 in that time period. Again, that was Exhibit #8 that
20 I stated earlier was the Epi-bar graph. She did state though
21 that these graphs are updated on a regular basis so the
22 information is pertinent at each individual time to come in on
23 a regular basis you can get them (sic). It was her testimony
24 that January 28, 2015 she met with the Defendant, again Nick
25 Lyon. She came with the Epi-Curve and reports, patterns of the

1 outbreak were generally, expect a general rise rather than a
2 point source spike as what was being shown. She testified that
3 she told the Defendant there was a rise in cases, began around
4 same point after the switch in the water source. There was a
5 correlation, a relationship in time. At that time there was a
6 clear indication that there had been a significant increase in
7 the Legionnaire's Disease based upon those, that data. It was
8 her testimony that Defendant Lyon had stated that he wanted to
9 be kept informed. Doesn't, she doesn't at that in her
10 testimony doesn't recall the expressions of concern, just
11 couldn't recall. It was her further testimony January of 2016
12 the public notice was given and it was her testimony though
13 that it was never able to prove a source or rule out the
14 change in the water source as a cause. She did indicate again
15 that she had communicated at a meeting January 28, 2015, she
16 communicated that this may put the Governor in a bad position
17 given there was a city manager in place. Could be a difficult
18 situation or something like that. She further testified that
19 they were having difficulty with local Health Department and
20 she also was, did testify, too, that the Defendant could talk
21 to the local Health Department and did not hear or see
22 Defendant do that. Not that he did or didn't. She just didn't,
23 was aware one way or the other. She did testify at a meeting,
24 this meeting, January 28, 2015 if that she felt relayed that
25 the Defendant was made aware of the problem and he was going

1 to communicate that to the Governor's office and she felt
2 things were being taken care of. Again, she also reiterated
3 the fact that Legionellosis is significantly large health
4 risk. She also stated that she told the Defendant there was a
5 temporal relationship with the water switch in Legionella
6 problem Flint area was experiencing. There's further testimony
7 that from Corinne Miller that if water source is a cause of
8 Legionella outbreak it's reasonable to expect more people
9 could be infected based on the 2014 data that someone may die.
10 She was questioned with why didn't a press release go out. It
11 was her statement that she met with the Director, that being
12 the Defendant, and others providing information in the
13 Department and thought that the Director was going to, that
14 being Defendant, was going to Governor's office and thought it
15 was being handled. She did state that this outbreak, the
16 Legionella outbreak was somewhat unique. That the water
17 quality at area of the evidence of water quality in the
18 Epidemiology evidence combined was nontraditional aspect of
19 the issue involved. Again, she testified that the press
20 release did go out eventually to the public, January 13, 2016
21 reporting Legionnaire's in these outbreaks. First wave in
22 2014, second wave in 2015. Did testify that it was feeling of
23 urgency within the staff and the Department. If, it could rule
24 out the H2 (sic) -- the water switch as being the cause, they
25 could not do that. She did testify in some length the

1 political overtones with the issue. She did state further that
2 as a State Epidemiologist the Department of Health and Human
3 Services is control (sic) of data and while the Department is
4 to give warnings and notices for latent disease and outbreaks
5 as well she did state that this Legionella outbreak was large
6 for Genesee County, very large. It was unprecedented and she
7 gave the definition for outbreak as well. She also stated
8 definition for Legionella cause deaths was, again, that same
9 time period, thirty day time period. Death within thirty days
10 with exposure to Legionella. During that time period death
11 certificate may state Legionnaire's Disease as a, as an
12 element of cause of death. There was again significant
13 testimony from her with regard to Epi-Curves and there was an
14 Exhibit #23, also admitted that showed there'd been thirty-one
15 new cases from June to August of 2015. In 2011, '12 and '13
16 the number of cases range from one to seven. So thirty-one new
17 cases from June to August of 2015 based upon that letter. That
18 was a letter from Susan Moran, again, Department of Community
19 Health employee, to Corinne Miller. Jim Collins had also
20 talked to, had communicated with Corinne Miller. He's with
21 Department of Community Health for Genesee County or was and
22 he stated that we have a problem. Told about, was told about
23 the increases in the cases shortly after Labor Day.
24 Significant again testimony with regard to the thirty-one new
25 cases from June to August 2015 but she also testified that

1 based on what she was seeing, 78% did not live on the Flint
2 city water, however, that still left based upon the numbers
3 22% unaccounted for based upon my investigation (sic) or my
4 observations of the Exhibits. It was her testimony further
5 that things in Flint were not getting done with the water
6 situation. This was a concern for the Department, that being
7 Health and Human Services Department if local and she did
8 state that if the local community is not capable of handling
9 the situation the State can step in. That being, again, the
10 State in context to her testimony was the Health and Human
11 Services Department being directed by Nicolas Lyon. There were
12 based upon Exhibits that were admitted, Exhibit #25 showed
13 that there were several attempts to request to get information
14 from Genesee County Health Department. She stated that there
15 was, does raise concerns for her Department that there was a
16 problem with communications of information and in fact that
17 information had to be FOIAed and some of that information was
18 still not received. It was her further testimony again,
19 Corinne Miller's, further testimony that the increase of
20 illnesses corresponds with timeframe of the switch in the
21 Flint River water and there could have been a declared State
22 emergency. Again, that was not done. It was her further
23 testimony that when balancing between health concerns and fear
24 for, fear of the community's receiving information and the
25 health concerns versus the politics involved that the health

1 concerns should trump any of those other concerns in providing
2 notice. There was testimony Kriste Etue, Michigan State Police
3 colonel, it was her testimony that there was the Declaration
4 of State Emergency in 2016, and, again, it was the same
5 information that she testified to the incident of local level
6 when local government can't handle a situation the State can
7 step in and help. Her term Emergency can be many factors and
8 it was further testimony from her that when those factors are
9 exhausted at the local level, all of its resources can't
10 handle it, the State can step in. It could include disease,
11 infection control. She further stated that Michigan State
12 Police would rely on the Department, that being in this case
13 the Michigan Department of Health and Human Services to give
14 information declaring an emergency. The Michigan State Police
15 respond to emergencies that are present, not preventative. It
16 was her testimony further that she doesn't recall the
17 Defendant or the Department ever saying there's an outbreak of
18 Legionella in the Flint area during, throughout this period of
19 time until this Declaration of the State Emergency. She stated
20 that she never heard Legionella mentioned, only lead in water.
21 In declaring an Emergency for her purposes be all about
22 providing resources. Lawrence Reynold (sic), pediatric doctor,
23 was also at the time a member of the Governor's Water Task
24 Force. He's qualified as an expert in Pediatric Medicine and
25 health. It's his testimony that the objective of this Task

1 Force was to, was pertaining to the water health issues in the
2 Flint area, the water quality. The concerns with lead
3 contamination, how decisions were being made with the
4 emergency manager. It's his testimony further that the first
5 communications with Defendant Lyon was early to mid January of
6 2016. In December of 2015 he stated that Defendant was not
7 available to speak with the Task Force. Said it possibly may
8 have been discussions late December 2015 but it wasn't likely.
9 He did state further that any information regarding
10 possibility of Legionella outbreak and this is during this
11 time period December 2015 any possible Legionella outbreak
12 Defendant Lyon said that's over. Witness testified that he
13 felt that the Defendant's responses were glib and possibly,
14 just not forthcoming, never offered to give any answers. Felt
15 like it was his statement that he felt that Defendant had
16 already lawyered up and not going to cooperate. Based upon
17 this Task Force information this witness further testified
18 that some of the concerns were with regarding a cooling tower
19 at Hurley with Legionellosis at that point. It became clear
20 based on his testimony, it became clear that it was not just a
21 cooling tower issue in Flint. It's also problem with the water
22 quality in general and the water supply for Flint. He further
23 testified at this meeting in late December to mid January of
24 2016 he questioned about the Legionella issue and, again,
25 Defendant said the outbreak was over. He, this witness further

1 testified he had no way of judging the veracity of his, of
2 Defendant's statements at that time. There was further
3 testimony from this witness that he had given information to
4 Harvey Hollins who was with the Michigan Economic Division. It
5 was his testimony, this witness's testimony that, again,
6 Lawrence Reynolds, he gave advice to Hollins saying if any
7 evidence of Legionella past or present, need to come clean
8 with it otherwise you're stepping on a landmine. It was his
9 testimony further that he received a, what he deemed a panic
10 call from Hollins in early 2016 and then got a request that
11 for, wanted anyone that was an expert in Legionella they would
12 like a person with Legionella experience. This witness further
13 testified there was a meeting with the Defendant mid-January
14 of 2016 with question of Defendant Lyon was, he was very
15 disappointed with the depth of knowledge of the Defendant. He
16 also felt that he was not getting full answers from the
17 Defendant with regard to the Legionella issue. Harvey Hollins
18 testified, again, Director of Urban Initiatives since 2011.
19 It's his testimony it was first time he heard of water
20 complaints was the summer of 2014. Was concerns of drawing
21 water from the Flint River. Switch was April of 2014. The
22 concerns were primarily from the pastors in the Flint area.
23 Later in November through December of 2014 discoloration, odor
24 of water, and concerns came up. The concerns ranged that from
25 people were getting rashes, getting sick. There was

1 frustration on contacting local officials, not getting any
2 responses from the local officials in the community. Mr.
3 Hollins further testified that in February of 2015 the
4 concerns still with the water issue, they were very concerned.
5 There was concerns with trihalomethide (sic) concerns in the
6 water. Not Legionellosis though at this point. Again, Mr.
7 Hollins testified that there was financial emergency manager
8 in place February 2015. State was running Flint under Darnell
9 Earley. Again, being controlled by the State at that point.
10 Harvey Hollins further testified that there was a conference
11 call in December 24, 2015 involved various individuals. During
12 this conference call was when he was apprised by the Governor
13 of Legionella outbreaks. Again, that was December, around
14 December 24, 2015. This witness further testified that he did
15 not recall the Defendant Lyon saying anything about Legionella
16 posing any imminent danger. After January 11, 2016 was when
17 notice went out regarding the Legionella issue. Again, Mr.
18 Hollins testified that the Michigan Department of Health and
19 Human Services is responsible for the health and safety of the
20 State residents. He, although he could not say exactly who was
21 responsible for monitoring he did testify that from November
22 or December of 2014 to the end of 2015 it was very clear that
23 the water was under, under treated during this period of time
24 in the Flint area. July and August of 2015 Mr. Hollins
25 testified that he did tell Governor his concerns in the Flint

1 community. That their water was, again, a major issue. There
2 was increases in measures of lead, TTHM, lead in copper with
3 the Governor apprised of that. Again, at this conversation,
4 December 24, 2015, it was this witness's further testimony
5 that he had asked Governor were you aware of two outbreaks of
6 Legionella. Governor said no, in Flint. Governor had told him
7 have Nick, that being the Defendant, give me the information.
8 Again, this is December 24, 2015. This witness further
9 testified that around January 11th or 12th of 2016 there was, he
10 had a meeting with Defendant Lyon. Defendant Lyon had
11 disclosed at that meeting the outbreak of 2014 and 2015.
12 There's testimony from Doctor Paul Kilgore, he was Associate
13 Professor at Wayne State University who was qualified as an
14 expert in Public Health, Disease, Outbreaks and Investigation
15 in Epidemiology. It's his testimony that he became involved in
16 Flint Water Investigation Task Group, FACHEP. His role was a
17 technical role. The analysis was to help reduce the impact of
18 Legionnaire's in causing the outbreak of Legionella. They,
19 again, detailed testimony with regard to where and how
20 Legionella is contracted. Again, he included drinking
21 contaminated water and not so much the drinking, not drinking
22 water, but the aspiration in the contaminated water is the
23 issue. It enters the lungs. It's not just the drinking of it.
24 He testified that it, Legionella grows well in fresh water,
25 lakes, ponds, etcetera, hot tubs, Jacuzzis, etcetera. Boiled

1 water, the steam, is a risk but you could, there are
2 significant several variables within the heat and temperature
3 of the water, the time, etcetera and the amount of bacteria in
4 the water. Those were all factors in determining how risky
5 those factors are with contaminated water. He testified
6 further that once bacteria is inhaled, the Legionella into the
7 person's system it multiplies and grows. Those more
8 susceptible individuals at higher risk are those over the age
9 of 50, those with former or current smoking, smokers are more
10 susceptible. High dose of steroids or cancer treatment,
11 kidney, lung diseases and anyone with a compromised system or
12 illnesses or weaknesses. It's his further testimony that the
13 number of cases in 2015 was remarkable as well and that it,
14 there was a peak in September 2014. Again, had significant
15 testimony with regard to the Epi-graphs that were provided and
16 admitted into in this matter showing those significant number
17 of cases. Again, there was testimony where there may be a
18 temporal correlation between this switch in the water supply
19 and the outbreak of Legionella. The levels of chlorine in the
20 supply system are very important in controlling Legionellosis,
21 Legionella. The, in September of 2014 he testified with regard
22 to the case count of fourteen in a month in the county would
23 be a great concern. He also testified with regard to how to
24 take samples for Legionnaire's Disease, urine specimen, sputum
25 samples, how collection in pleural fluids and in other types

1 of samples. He also testified that a county cannot look into
2 Michigan Surveillance System to see how many Legionella cases
3 are in another county. State can see all of those counties
4 though and it's the State that has to (sic), purview for the
5 several Counties but a County in general cannot get
6 information from another County. The system of regional
7 Epidemiologists would have to assist the County to prying that
8 information, stated Epidemiologist. Also testified that an
9 outbreak with Legionellosis or an outbreak in general would be
10 considered ended when the count falls to a baseline. Again,
11 Legionella is seasonal. It's his further testimony that in
12 Spring of 2016 there was a meeting with Defendant Lyon and
13 State. Several individuals were at that meeting but there, at
14 that point there was communications that there were still
15 concerns in 2016 outbreak could be occurring or could occur
16 with health concerns based on the data trends. Again, at this
17 meeting in Spring of 2016 with the Defendant present this
18 witness further testified that it was discussed why it was
19 important and what could happen if an outbreak occurred and
20 there was communications to the Defendant what needs to be
21 done. Defendant said, again, it was reiterated, again, that
22 his statement was something to the effect, we can't save
23 everyone. Someone has to die of something. It was his, this
24 witness's testimony that he, it was his impression it was not
25 stated in a joking conversation. It was quite serious. This

1 particular witness was quite disturbed by the, Mr. Lyon's
2 comments. It was further testimony from this witness that
3 based on the 2014 data if looked ahead based on the pattern it
4 would be a concern for 2015 as well for Legionella outbreak.
5 It was reasonable foreseeable that an outbreak would occur in
6 2015. It was further testimony that you should make sure that
7 the data set was complete and generate a hypothesis of the
8 cause of the outbreak and what steps could be taken to make
9 sure the local public government is educated. Distributing
10 information about the disease, etcetera, was suggested
11 websites through media, reach out to the community groups in
12 general would be significant ways to communicate with notice
13 that should go out because of the data results. Further
14 testimony that, from this witness, that this State would like
15 to make public aware of outbreaks as soon as possible and,
16 again, when this epidemic was evident in 2014 it was this
17 witness's further testimony that if you're seeing cases in
18 cold season as in 2014 it's a red flag. In 2015 base stats for
19 2014, the outbreak in 2015 was reasonably foreseeable what was
20 like, what could happen. There was testimony from this witness
21 as far as multijurisdictional issues, again, having a patient
22 contract disease in the Flint area and goes to Oakland County
23 with symptoms, depending on the surveillance it could be a
24 multijurisdictional issue. This is why there should be more
25 State intervention involved with these multijurisdictional

1 issues. There was further testimony from this witness that
2 incubation period for Legionnaire's is between two to ten
3 days. Some Epidemiologists say the outbreak would be over if
4 no report, reported cases in a two month period. Some like
5 this particular witness as he stated though using the terms to
6 baselines instead. This witness further testified at these
7 meetings, this particular meeting stating that when explained
8 the gravity of the situation if nothing could be done and how
9 serious the situation could be, was being stressed to the, to
10 Mr. Lyon. Based upon the trajectory of 2014, 2015 data if
11 don't try to address the issue, people could die, and again,
12 the same figure was testified to that at least 10% of the
13 diagnosed population will die of infected (sic) and, again, if
14 the outbreak happens you can expect more deaths would occur.
15 It was this witness's further testimony and evidence of
16 getting the water samples, residents (sic) and lines, water
17 supply samples, this would have helped in determining cause of
18 the outbreak and limit it. It was further testified that if
19 biofilm in the pipes that contain Legionellosis and distribute
20 that Legionella throughout the supply area. If you have
21 stagnated areas chlorine levels will go down and the bacteria
22 could thrive and multiply in those particular areas. He gave
23 significant detail on understanding water distribution system
24 within the city and the potential distribution of bacteria was
25 important investigation to possibly prevent further outbreaks

1 including a household survey. There was further testimony from
2 this witness that the local Health Departments were reaching
3 out to the State regarding the water supply system. The local
4 community was trying to identify what the cause of the
5 outbreak, request for regular meetings. It was according to
6 this witness sound, sounded like a cry of, for help. Shawn
7 McElmurry testified as well, an Associate Professor with Wayne
8 State University. He was qualified as an expert in
9 Environmental Engineering relating to health and environmental
10 engineering issues. He was invited to Technical Advisory
11 Committee in 2015. He was contacted by Michigan Department of
12 Health and Human Services. He was eventually hired to
13 investigate if the switch in the water supply caused an
14 outbreak in Legionellosis in the Flint area. He gave
15 significant detailed information in his testimony with
16 regarding the possibility of growth of Legionella in the
17 supply system in particular with the problems with a
18 population in an area that is decreasing or has decreased,
19 leaving potential issues with slow water rates and increased
20 water age in the supply systems and the growth of in
21 particular in this case, Legionella disease but bacteria in
22 general. Also testified that more water sits in the pipes the
23 more chance of corrosion. Somehow this also leads to fill
24 issue with the water supply systems in the area. He testified
25 with regard to tuberculation and internal corrosion of the

1 pipes causing organism growth. Again, testifying that less
2 water flow at the end of the service lines with because of
3 insufficient pressure causes stagnation of the water and aging
4 of the water and, again, increasing the risk of bacteria
5 growth including Legionella. Also testified that all pipes
6 have biofilms in the pipes. Legionella likes to live in these
7 particular areas. Without disinfectant, no chlorine, stressing
8 of the Legionella will, this Legionella will grow that lives
9 in this biofilm area. If you can keep the Legionella stressed
10 it keeps it under control. He also testified, again, about
11 corrosive supply lines and how that impacts the chlorine
12 levels. Chlorine becomes less of a disinfectant, less
13 suppressive of bacteria and chlorine also has a somewhat,
14 somewhat chemically changes to chloride which is basically
15 salt added. This complication with the growth of bacteria.
16 Flint system he testified to with regard to what his
17 information was and what he's investigated that the Flint
18 system had high organic matter issue with iron pipes and lack
19 of chlorine. He suggested this is a perfect system for growth
20 of Legionellosis, Legionella in the plumbing system,
21 therefore, maintaining a level of chlorine you keep bacteria
22 down was important. He also testified that if there's enough
23 iron in the system from the plumbing it will diminish the
24 chlorine effect on the bacteria. Also testified that if there
25 are large amounts of Legionella it's possible to diminish the

1 disinfectant itself and the effects of normal, if it was a
2 normal chlorine level. He gave further testimony that if a
3 hospital chlorinates at normal levels with a high amount of
4 Legionella in the system the Legionella could still go and
5 overwhelm the system. He did testify that all of these
6 elements create a red flag that could correlate to the
7 outbreak of Legionella in the area based upon the large levels
8 of lead. It could raise red flag for the area and, again, that
9 red (sic) blood levels was shown to be present in April of
10 2014. Again, he testified further that there was a clear
11 increase correlating to the water supply change with the blood
12 lead levels in the area (sic), children in the area. This data
13 correlated well with, again, what he's deemed the possible
14 risks of the large level of lead levels that could raise red
15 flag for correlation to other bacteria. There was testimony
16 with regard to boiled water advisory that went out for the
17 blood lead levels and that, once that advisory went out it was
18 his testimony that it did, the blood lead levels did decrease
19 and also saw awareness of the water contaminations for the
20 area. It's his testimony further that the scope of his project
21 was to understand what had happened in the Flint area. He
22 wanted to, wanted samples from filters, hot water tanks,
23 biofilm swabs from shower heads, kitchen faucets as well as
24 shower water as well. So these samples could be collected and
25 trying to discover a pattern during the outbreak and there was

1 further testimony that from Mr. McElmurry that obtaining this
2 information was significant to determining what was the cause
3 of the outbreak. Mr. McElmurry further testified that he was
4 not able to complete their work the way they had wanted
5 because it was not fully funded. There were multiple
6 conversations with Mr. Lyon that Mr. Lyon was not in favor of
7 parts of the testing. Did not want to collect from the water
8 filters itself. Mr. McElmurry tried to explain to Mr. Lyon
9 the significance of the water filters and it wasn't that they
10 were trying to determine the sufficiency of the water filters
11 in protecting from bacteria but it was a prime area of
12 collecting for past history for that plumbing system because
13 it would collect that bacteria. Tried to highlight that to Mr.
14 Lyon but Mr. Lyon did not agree with that analysis. This
15 witness further testified that it was clear that the
16 Department of Health and Human Services and the State were
17 skeptical of what they were wanting to collect and, again,
18 tried to determine, tried to explain that it was not their
19 intention to explain the quality of the filters at all but
20 wanted the historical evidence that the filters would give
21 regarding the water supply systems. Again, this witness
22 further tried to impress the gravity of the situation as well
23 as Doctor Kilgore with regard to obtaining this information
24 because of the concerns for the health and safety of the area
25 and the public in general. It was this, Mr. McElmurry's

1 testimony that his team felt that Department of Health and
2 Human Services was not changing its conduct and that it was
3 needed that the project itself needed sustained, enhanced
4 surveillance to make sure that another outbreak was less
5 likely to occur and that the information and the issues were
6 resolved. Again, it was reiterated that same meeting in May
7 of, around May according to this witness, May of 2016
8 defendant stated, I can't save everyone. This witness
9 testified that it was definitely not a joke in defendant's
10 statement and it was disgusting to hear. There was no outcome
11 at that meeting with regard to furthering this project's
12 investigation of the water issue. Again, it was this witness's
13 further testimony that Doctor Zervos appeared quite disturbed
14 at what was going on at that meeting. Witness testified that
15 Mr. Lyon was constantly stating at this particular meeting
16 that skepticism with regard to the collection but also that it
17 was important to keep the balance between finding information
18 and not upsetting the public and that Mr. Lyon did not want to
19 find more Legionella. That was his impression of the meeting,
20 the way it was, the outcome of that meeting. Again, that was
21 just an impression on his, his (sic) part. There was further
22 testimony from Shawn McElmurry that with regard to his contact
23 with Harvey Hollins that there was never a concern about money
24 or lack of money. It was from the Governor's office that
25 wanted the, wanted it done. There was further testimony from

1 Shawn McElmurry, again, that the ideal temperature for
2 Legionella growth is between 95 and 115 degrees Fahrenheit.
3 If you can maintain a higher, a high temperature it helps
4 reduce the growth. There, he also testified there were fifty
5 to sixty different species of Legionella and, therefore,
6 testing, getting samples and the testing of potentially being
7 able to test patients for these, for this study was important
8 because of the ability to fingerprint where these (sic)
9 bacteria was growing and where it was originating from. Again,
10 he testified, again, about having the data with regard to the
11 boiled water alert that I had stated earlier and that the
12 result from that notification to the public did have an effect
13 on the public's actions and the, and their sensitivity to
14 protecting against those health issues. Again, it was just a,
15 trying to show that public notice does have an effect on the
16 public in general. Again, this witness reiterated that
17 defendant, the communications that he had, money was an issue
18 for this project and the defendant didn't think that this work
19 was necessary. There was, again, meeting with FACHEP meeting
20 middle of May of, May, approximately May 16, 2016. Doctor
21 Kilgore was at that meeting stressing the importance to
22 maintain an enhanced surveillance for a couple of years on the
23 water system in the Flint area. There was evidence based upon
24 testimony that, that (sic) you can't assume that change in,
25 change back in the water supply system would take care of any

1 new outbreaks. There was tried to stress at this meeting in
2 May 16, 2016 at the FACHEP meeting, again, middle of May, Tim
3 Becker was present. Defendant was present at that meeting.
4 They tried to stress that the science behind of why this
5 information was so critical and to prevent further outbreaks
6 defendant was having a hard time with the science and why the,
7 why it was imperative at that meeting. Again, this being,
8 trying to stress the gravity of the situation. There was
9 testimony from Marianne Turnbull, who is the daughter of John
10 Snyder, victim in alleged in count two of the, I think it's
11 count two of the complaint, count two of the complaint. It was
12 her testimony that her father was suffering from heart disease
13 in 2014. He had leukemia. It was she described as not a fatal
14 type but he was active, used to ski, still going up with
15 friends for outdoor activities. Wasn't skiing at the time
16 because of arthritis but was still in, according to her, in
17 decent health. Was enjoying life at that point. It was her
18 testimony that in health in 2015 his, he was still living on
19 his own in Flint in 2015. That he was taken to McLaren
20 Hospital June 16, 2015 for an old shoulder injury, was getting
21 worked on. He was discharged on June 23, 2015. On June 30,
22 2015 she was notified that her father was being transferred to
23 a hospital. He was in a rehab center in Linden for about ten
24 days prior to that. That his oxygen levels had decreased on
25 June 30, 2015 and her father passed away at the hospital. She

1 testified that she would never have taken her father to a
2 hospital that she'd known there was a health risk at. She
3 testified that she learned of Legionella outbreak ten days
4 after her father had passed away. She testified that she did
5 not observe any symptoms. He would, no trouble breathing,
6 etcetera until that Friday night on approximately June 26th or
7 27th. Again, he passed away on June 30th. Testimony from Julie
8 Borowski, Director of Compliance and Risk Management at
9 McLaren Hospital, it's her testimony that her department works
10 closely with public health authorities for educational health
11 and resources. It was her testimony in June 2014 there was a
12 first, she had a first, they had a first patient with
13 Legionnaire's Disease that they received notice of. There was
14 surveillance going on, actively looking for outbreaks in 2014
15 she became aware of. There were, at that, what her testimony
16 was there was six cases in Genesee County. McLaren cared for
17 three of those patients. McLaren was doing routine
18 maintenance, hyperchlorinating their hospital water system.
19 Any, it was her testimony that any Legionella disease
20 information that declared to, found out at the hospital is
21 required to be reported to the health officials. They have an
22 automatic system that sends directly to the State as well. She
23 did state that there was a possible lag time in State
24 receiving that information so McLaren also sends the results
25 itself. July 2014 testified there were five cases in Genesee

1 County. McLaren cared for two of those patients. That State
2 did not contact McLaren for this time period, July 2014. Local
3 Genesee health system contacted McLaren. McLaren developed a
4 line list for compilation of data, specific issues for
5 Legionella. Testified that there was no contact with the State
6 in July of 2014. She, it was her testimony that she directed
7 her staff in September of 2014 to contact the State because
8 they were seeing more cases but she did not have any return
9 contact from the State. She testified that in 2014 the system
10 was, hospital water system, was hyperchlorinated usually May
11 and December but because of what was happening at the hospital
12 they did it in October and doing it monthly at that point. She
13 stated that she knew the water coming into the hospital itself
14 was chlorinated because of their system hyperchlorinating and
15 she became aware of the outbreaks. Again, in 2014 no one in
16 September of 2014 from the Department of Health and Human
17 Services came out but there, she did state that there were
18 people from DEQ, oh, I'm sorry, but not from DEQ either,
19 either department, Department of Health and Human Services or
20 DEQ. Again, in 2014 it was her testimony the State did not
21 come in to take any water measurements, gauge levels,
22 etcetera. She testified from line list that was created for
23 the hospital August 2014, this is based on her information,
24 ten cases in the Genesee County, the four were taken care of
25 at McLaren. September 2014, eight in the county, seven taken

1 care of at McLaren. October of 2014, five in the county, two
2 taken care of at McLaren. November 2014, three in the county,
3 two taken at McLaren. December 2014, five in the county, two
4 taken care of at McLaren. It was her state (sic) testimony
5 that McLaren did alert the public health department, both
6 local and State, to alert the, she said the public in general
7 because of the numbers that were coming in. It was her
8 testimony that the State told McLaren the outbreak was over in
9 May of 2015. It was surprising to her, it was her testimony
10 that the State never declared it in the first place and did
11 not inform McLaren it was back on June of through September
12 2015. There were still cases May of 2015. Still cases of
13 Legionella. Three in the county, two at McLaren May of 2015.
14 It was her testimony that June through September of 2015 there
15 was no increase in the numbers of Legionella patients being
16 treated. That was on Exhibit #59 that was admitted. Also,
17 there were additional cases of Legionella found in 2016. She
18 gave numbers July three, August four, September three, October
19 there were four, November two, December one. That's 2016. She
20 went into detail with regard to an order in 2017, order
21 potential threat to shut down the hospital from Department of
22 Health and Human Services threatening McLaren. Defendant Lyon
23 and Eden Wells sent her order threat of imminent danger if
24 they don't comply with an order to give information to the
25 State. It was her testimony that McLaren was being transparent

1 and had sent that information and received, let's see, McLaren
2 sent Department of Health and Human Services she stated in
3 2014, 2015, sent line list for those testing results in those,
4 that time period. It was her testimony McLaren was being
5 transparent with local and State. They wanted help. They
6 needed help. In 2016 it was her testimony that McLaren had
7 been ordered not to give information. There was an ongoing
8 legal issue going on but it was her testimony that in 2014,
9 2015 that information had already been given to the State. It
10 should be noted that there was a PPO (sic) for this legal
11 issue that was going on. It's her testimony in 2015 there was
12 absolutely a health crisis going on in Flint. No one from
13 State came to help. It's her testimony further that there was
14 a conclusion that the, after McLaren was doing their studies
15 there was testing of water supply lines going to McLaren in
16 December 5th through the 19th of 2014. It's her statement that
17 the conclusions were the supply lines from the Flint city were
18 not, their lines after being treated were not contributing to
19 Legionella. It was her statement that from Legionella came
20 back detected in the lines, supply lines from Flint city. This
21 is DEX#00 (sic), Legionella came back not detected so I'm,
22 she, they were testing the water on a regular basis at that
23 point. It was her statement that those supply lines were not
24 contributing to Legionella, that being the supply lines from
25 the city; but that they were still having problems with what

1 she termed was Legionella. It was her statement further that
2 there was no notice given from the State that there was an
3 outbreak any time in 2014. Shawn McElmurry again testified. It
4 was, he further testified that the challenges of, regarding
5 the challenges of maintaining the water system with the
6 shrinking population in the Flint area. Again, I've already
7 stated this but it was his testimony that the filters on the
8 faucet became a major sticking point with the defendant, the
9 point of use filters. There was testimony from Stephanie Lewis
10 a medical doctor. It's her testimony that she testified with
11 regard to Mr. Skidmore's death certificate. She testified that
12 Robert Skidmore, that there was a comorbidity issue,
13 coexisting conditions elements with regard to his death. It
14 was noted that there was end stage congestive heart failure,
15 diabetes, tobacco use, contributed to his death as well as
16 these issues were contributing to his death as well. Again, he
17 was compromised patient given the comorbidity information. He
18 came back to, Mr. McElmurry, again, laying his concerns with
19 regard to his project for testing. It was his concerns that
20 time was being stalled. He was not able to get enough data,
21 the scope of the data, again, based upon the, all of the
22 issues that he wanted to test including the filter, water
23 filters, the point of service. It was his testimony that he
24 wanted to be able to collect enough data, that funding was an
25 issue. Seemed like there was unnecessary delays in the data

1 use agreement. It was his testimony that the State's level,
2 the focus was wanted to be narrowed to just Legionella only at
3 one point and that insisted that system needed to be tested
4 for the, for other bacteria to fully understand the water
5 supply system and the impact of the water switch. Again, it
6 was his testimony that Legionnaire's Disease is a somewhat of
7 a form of pneumonia as well. That shows evidence (sic). Again,
8 he testified further with regard to dead ends in the supply
9 system in the water system for the Flint area. High amount of
10 bacteria present. There was no good way to tell, to show high
11 bacteria present just by looking. Said there was no good way
12 to tell but may show cloudy H2O or smell in water but it may
13 not be present either even though there's cloudy water or
14 smell, foul smelling water and discoloration was being
15 complained of in the Flint area with water; again, could be a
16 number of factors including bacteria or not bacteria in that
17 system. He did testify that if during the time of the outbreak
18 when Legionella was blooming it could have been taken, could
19 have taken what he described as approximately twenty samples
20 and about \$2,000 worth could have given an indication of how
21 it was happening at that point in time. It was his testimony
22 that the Michigan Department of Health and Human Services,
23 DEQ, and the Governor's office were working, were very unified
24 in working together. It was apparent to him with regard to his
25 investigation. Again, he testified with regard to samples that

1 wanted to be taken and he discussed potential reservoirs, hot
2 water tanks, which should be inspected, temperature issues.
3 He did state further, again, talking about the scope of the
4 project with regard to bacteria and that it was, the focus was
5 to limit it to Legionella only. Witness further testified that
6 he did find bacteria and other, other than linked to
7 Legionella in parts of the system but it was his argument that
8 may be indicative of the water line breaks, etcetera, in
9 finding bacteria could help pinpoint the issues that these
10 supply systems were having or the water systems were having.
11 He did testify that his intents were if showerheads were found
12 to have Legionella he wanted to replace those showerheads. It
13 was worked into the budget but defendant Lyon did not want to
14 replace the showerheads. He wanted instructions given to the
15 residents of how to clean those showerheads instead. Witness
16 was testifying that he wanted to have them replaced since they
17 were already there on, at that time and they budgeted it in.
18 Defendant did not want to do that. There was with regard to
19 hot water tanks on residence (sic) it was budgeted to replace
20 tanks if found Legionella but he was told that hot water tanks
21 with high concentrations if Legionella was evident that the
22 witness, this Mr. McElmurry could only refer residence under
23 his project to get help and not replace the, not replace them
24 through their project. It was his further testimony that Eden
25 Wells had warned him that the State does not want filters,

1 water filters collected. Again, that is shown in Exhibit #53.
2 It was his further testimony that State does not want to find
3 DNA in the with regard to bacteria in the water dead or alive.
4 That they did not want any information of bacteria in the
5 water going out to the public. It's his impression that the
6 State was, was his impression given all this conduct that the
7 State was just pulling out of the Flint area. There was
8 testimony from Robert J. Skidmore, son of Robert C. Skidmore,
9 the victim in alleged in count one of the complaint. It was
10 Robert's, I'm going to say Mr. Skidmore's of the decedent, who
11 passed away; Robert Skidmore testified that in 2015 his father
12 had health issues, had, was, had issues with water in the
13 lungs, would have to be drained due to the heart disease he
14 had. He had, this heart disease was being managed for about
15 ten years prior. It was the same thing, they would just drain
16 the what he described as water off his lungs, fluid off the
17 lungs. It was his testimony further that up to May of 2015
18 prior to that he was taking his father, his father was going
19 to McLaren. That he had, this witness, Mr. Robert J. Skidmore,
20 had no knowledge of Legionella, Legionnaire's Disease
21 breakout. McLaren was the hospital they always went to. In
22 June of 2015 it was testified from this witness that he took
23 his father to the hospital. His father was not feeling good.
24 It was, he was told that he had pneumonia and was admitted. He
25 was in the intensive care unit. On approximately according to

1 his testimony approximately June 23rd, 2015, first date was
2 just June 2015 and approximately June 3, 2015 the hospital
3 told him that his father had Legionnaire's Disease. This
4 witness further testified that prior to contracting
5 Legionnaire's Disease his father was active. Afterwards he
6 would just sit in a chair, was not feeling good, life
7 dramatically was different for him. He described his father as
8 going through a slow death. Testified that his father died in
9 December of 2015. Was this witness's testimony that it was
10 clear to him it was a dramatic, immediately dramatic -- his
11 health decline was immediate after contracting Legionnaire's.
12 It was further testimony that even up to May of 2015 prior to
13 that time period his father was living independently, and
14 again, when he left the hospital his health was dramatically
15 changed.

16 There was testimony from James Henry, Genesee County
17 Health Department Director from September 2014 through
18 present. He testified that their department is concerned with
19 protecting the public, controlling environmental hazards,
20 protect the public's health, anything involving illnesses they
21 would contact the State with. He testified that in 2014
22 Genesee County Health Department was understaffed. The
23 employees, the epidemiologists all have Master degrees for the
24 County, no PhD's. He testified that first day on the job he
25 had a boiled water advisory for E.Coli in 2014. Let's see,

1 placed in the Flint Journal and MLive. With his first day on
2 the job it happened. He stated that in October of 2014 first
3 time he heard about Legionella outbreak it was up through
4 September of that year, 2014, there was 21 cases. First time
5 he heard about it was October of 2014. It was his testimony
6 that he had seen zero people from the Michigan Department of
7 Health and Human Services on Legionella problem physically
8 working in Flint. It was his testimony further that from
9 November of 2014 through January 2015 there was no notice sent
10 to the public. Trying to obtain water information for Flint he
11 was asking city and State for help regarding water quality
12 information. This witness testified that he was not getting
13 information he was requesting. Eventually he stated that he
14 requested information through a FOIA request from the city for
15 information and FOIA through on Michigan Department of Health
16 and Human Services. He contacted CDC January, February or
17 March of 2015. He was just not getting information that he
18 felt he needed for concerns. He stated that the, his
19 department was overwhelmed. They had a lot going on. He was
20 asked why no public notice was going. This was not an excuse
21 but that was the information he was giving that they were
22 overwhelmed, there was a lot going on. He wish he had. They
23 were relying on Michigan Department of Health and Human
24 Services on publishing but Michigan Department of Health and
25 Human Services was saying the evidence was not there yet to

1 say that Legionella had caused, was caused by Flint River.
2 It's his further testimony that the Department of Health and
3 Human Services did block CDC from coming in January, February,
4 March of 2015. That this witness had gotten a partial water
5 results but not what was, what he was looking for during that
6 period of time. Again, not receiving information and it's his
7 further testimony that June 4, of 2015 all of a sudden
8 Michigan Department of Health and Human Services told him the
9 outbreak was over. It's his testimony that he emailed CDC that
10 doesn't think the outbreak is over. Detailed three cases that
11 it was not over. This was May and June of that year. Again, it
12 was testified in detail that the Michigan, the Genesee County
13 Health Department was struggling with getting information at
14 all regarding the requested information and Legionella issues.
15 This James Henry further testified that on Exhibit, with
16 regard to Exhibit #71 that was admitted there was a letter
17 signed by Nick Lyon February 14, 2017. The entirety of that
18 correspondence suggests that Michigan Department of Health and
19 Human Services has broad investigatory powers. Defendant Lyon
20 acknowledging that, those broad powers.

21 There was testimony from Doctor Joel Kahn, he's
22 qualified as an expert in internal medicine and cardiovascular
23 disease, pulmonology. He's Board certified and he was
24 qualified in those areas. It's his testimony that he reviewed
25 medical records for both Robert Skidmore and John Snyder, the

1 two alleged victims in this matter. It's his testimony that
2 Robert Skidmore had issues of fluid accumulation that was
3 being drained from his lungs on number of occasions based upon
4 his health issues. It's his, this witness's further testimony
5 that Robert Skidmore had tested positive for Legionella and
6 pneumonia when, around the period of June 1st through June 9th
7 of 2015. Was his testimony that based upon the records, this
8 patient's life dramatically changed. His energy, quality of
9 life, was dramatically decreased after this time period.
10 Patient was 84-years-old at the time, that's June 1, 2015.
11 This doctor further testified that there was, that cause of
12 death and one cause of death was Legionnaire's Disease based
13 upon his information and his opinion. John Snyder was, again,
14 he reiterated John Snyder's health concerns that he suffered
15 from heart problems. That he, again, John Snyder had tested
16 for (sic) positive for Legionnaire's and died a short time
17 after that fact. He, doctor further testified that typical
18 incubation period for Legionnaire's was two to fourteen days.
19 With regard to John Snyder the cause of death based on his
20 opinion based upon the medical records Legionella pneumonia
21 was cause of death of John Snyder. On further testimony of
22 this witness going back to Robert Skidmore the death
23 certificate stated end stage congestive heart failure. This
24 witness stated he does not contradict the witness's (sic),
25 this death certificate does not contradict his opinion. He

1 says it's one cause, was congestive heart failure with the
2 acceleration and deterioration was Legionella was a
3 contributing factor, was a cause of this deterioration and his
4 condition. So based on his studying Mr. Skidmore's records it
5 was his testimony that somewhere between May 13th, May 19th
6 sometime during that period Robert Skidmore would have
7 contracted Legionella based on his studying (sic), studies on
8 the patient's records. Further testimony from this doctor that
9 Mr. Skidmore was a compromised patient. Again, had
10 cardiovascular defects. When added on top of this
11 Legionnaire's Disease then all this combined if not for the
12 Legionella and the hospital stays this was the straw that
13 broke the camel's back as he stated. Was not a healthy camel,
14 this was the contributing factor that broke the camel's back
15 was Legionella given his compromised health concerns. Doctor
16 Kahn further testified with regard to Mr. Snyder's wound that
17 he was in the hospital for. It was his opinion that based upon
18 opinion letters that he observed, mission (sic) letters,
19 patient file information on May, March 30, 2015 Mr. Snyder
20 does not indicate infectious wound problems. Doctor Kahn
21 further testified that this patient, again, Mr. Snyder, was
22 cardiac, had a cardiac pacemaker. Since it was implanted would
23 suggest to this Doctor Kahn, this witness, that he was a good
24 candidate with moderate to long term prognosis given the cost
25 and invasiveness of the unit, the cardiac pacemaker that was

1 going, that was in place. Decision to change pacemaker, it was
2 decision to change pacemaker to a much more, what he described
3 as an elite pacemaker. Was his opinion that this determined
4 his health and long term life expectancy, namely good
5 candidate for this expensive procedure, and, therefore, would
6 have outlived his time period that he was, for his death. He
7 would have outlived that time period. It was this doctor's
8 opinion that there was overwhelming that Legionella killed Mr.
9 Snyder. Again, based upon records there's implications for
10 long term survival of Mr. Snyder based upon those records. It
11 was this doctor's opinion that there is no question that
12 pneumonia caused death contracted by the Legionella from the
13 hospital. There was no other cause. That was the cause of
14 death that broke the camel's back, was the Legionella.

15 Back to James Henry, again, the testifying. It's his
16 testimony further that he kept asking for help with
17 Legionnaire's outbreak for the various departments, CMH and
18 it's his testimony that there was in asking or help for these
19 various other State departments that there was no sense of
20 urgency. Only a sense of scrutiny from these departments,
21 including Michigan Department of Health and Human Services
22 itself. Further testified that, again, it was Genesee County
23 Health Department's initiative to have CDC come to Flint,
24 April 27, 2015. First time CDC came to Flint was August of
25 2016. Question was asked why. This witness testified he had no

1 information why they didn't come. There's further testimony
2 from this witness as of June 8, 2015 Michigan Department of
3 Health and Human Services never came to Flint. It was MDHHS's
4 statement based on Exhibit #77, we have no, if we have not
5 seen any information that would rise to level of warranting
6 Epi-Aid request for CDC help from Genesee County Health
7 Department. Again, this was June 8, 2015, around that time
8 period. It was further testified that after June 15th there
9 were no boots on the ground from Michigan Department of Health
10 and Human Services. It was this witness's further testimony
11 that at least twelve deaths were related to Legionella after
12 April 27, 2015.

13 James Henry testified further that, well, strike
14 that. James Henry further testified that under question why
15 the public was not alerted earlier this witness, again, James
16 Henry, stated it was a complicated scenario. People were
17 pointing fingers at one another and a lot of publicity. He
18 stated that we made mistakes and public should have been aware
19 of the Legionnaire's outbreak. He also testified that Michigan
20 Department of Health and Human Services had sputum samples and
21 did not share them with him. He further testified, again, that
22 Michigan Department of Health and Human Services did not
23 provide sputum samples or test results of samples in 2015. He
24 says he would have wanted those, to get these, to get samples
25 matched, DNA to find source of the issue. He testified that he

1 may have tested the areas where those samples were showing the
2 source was coming from. It would have helped as at least a
3 preventative measure. There was, I'm sorry, as a preventative
4 measure that statement there was some arguments with regard to
5 public notice. This witness testified that defendant never
6 objected to this phrase being used as a, in the public notice,
7 preventative measure but was -- this witness further testified
8 that Genesee County Health Department did not get any
9 training. It was, again, asking for information, was not
10 getting support. There was no support given by the State to
11 assist in the cold calls that were being made in the area
12 trying to receive information with regard to the outbreaks.
13 This witness testified that he came to know that there were
14 matching samples of sputum samples in 2016. Would have like to
15 have had those samples from, again, Michigan Department of
16 Health and Human Services. This witness further testified in
17 summary the, he was not, just not getting any information to
18 economically deprived people in the Flint area. There was just
19 lack of information being disseminated. Anyone not looking at
20 the Genesee County Health Department website did not have any
21 notice of outbreaks and State did not help disseminate
22 information.

23 Do find based upon the totality of all the testimony
24 of all the witnesses and Defense witnesses I find that Defense
25 witnesses testimony and evidence that was provided by both

1 sides, Defense information was, is just not enough to overcome
2 the Prosecutor in this matter establishing a probable cause
3 standard evidence in this case for charges. Do find based upon
4 all of the evidence in its totality find that Prosecution has
5 established that the following crimes have been committed and
6 probable cause exists to believe that Nicolas Lyon has
7 committed these offenses during this time period, 2014 to
8 present, in Genesee County, Flint city in particular. That
9 being involuntary manslaughter, count one; involuntary
10 manslaughter, count two. Count one is regarding Robert
11 Skidmore's death on December 13, 2015. Count two is regarding
12 John Snyder's death on June 30, 2015; misconduct in office on
13 count three and I will go into details on summary of that as
14 well. Count four I as I stated, I'm not taking any position on
15 being a misdemeanor charge but that will carry over to Circuit
16 Court for that matter. Do find with regard to the involuntary
17 manslaughter charges, defendant had legal duty as I described
18 pursuant to statute. That the defendant had the capacity to
19 perform that duty, that being inform the public of the
20 outbreaks and notices at least to the public that they were at
21 risk. Find that the defendant either acted wilfully and
22 neglectfully or refused to perform those duties. That the
23 victims deaths, that being Robert Skidmore and John Snyder,
24 their deaths were caused by this neglect of the defendant and
25 his failure to act appropriately with regard to disseminating

1 notices to the public. There's been significant number of
2 testimony for probable cause standards that if that
3 information had been disseminated that information would have
4 likely prevented those two deaths, at least from a reasonable
5 cause for probable cause standards. With regard to involuntary
6 manslaughter as well under both failure to perform legal duty
7 and negligence in performing those duties, again, defendant
8 had a legal obligation, duty to inform the public in
9 reasonable and timely manner. That was failed to have been
10 done. Again, these deaths of Mr. Skidmore and Mr. Snyder were
11 caused by the defendant's lack in performing those duties, his
12 negligence as I stated earlier, and in fact there's been
13 enough evidence to establish by probable cause standards that
14 defendant was grossly negligent in his commission of those
15 lawful duties under the statute that he was to perform to
16 protect the safety of the public with regard to these
17 outbreaks of Legionella disease. There was a, any (sic) based
18 on probable cause standards a lack of lawful excuse or
19 justification for defendant not performing those duties. With
20 regard to the misconduct in office, again, find that the
21 defendant failed to notify the public in any meaningful,
22 reasonable time period. That the defendant knew the outbreak
23 in 2015 and only notification was given to the public in
24 January of 2016. This misconduct in office, defendant is a
25 public officer, Michigan Department of Health and Human

1 Services. This misconduct was committed by misfeasance,
2 improper doing of his duties under that act. In the exercise
3 of his official duties or under the color of his office he was
4 improperly doing those duties as prescribed by statute. Do
5 find based upon the totality of all of the evidence that this
6 information he had since 2015 was not given by probable cause
7 standards to the Governor. I find this behavior over this time
8 period of withholding information corrupt based upon
9 misconduct in office for probable cause standards. Therefore,
10 these four charges will be bound over to Circuit Court for
11 further proceedings. Again, involuntary manslaughter, count
12 one; involuntary manslaughter, count two; misconduct in
13 office, count three; as well as the willful neglect of duty in
14 office on count four.

15 MR. FLOOD: Your Honor, if I may?

16 THE COURT: Yes.

17 MR. FLOOD: As it relates to count three, the
18 misconduct in office, there was, you (sic) have added
19 alternate theories. There was the other theory of the
20 obstruction and malfeasance as it related to the FACHEP.

21 THE COURT: Oh, I'm sorry, I, I (sic) kind of skipped
22 over it.

23 MR. FLOOD: But I understand the other alternative
24 theories.

25 THE COURT: Well, no, let me, I may have just skipped

1 over it. Let me just make sure.

2 MR. FLOOD: Very well, thank you.

3 THE COURT: I did mention misfeasance in office, the
4 potentially unlawful act of malfeasance I'm going to bind over
5 on that matter, too, based on the totality of all of the
6 evidence. Again, possibly an unlawful act. Find based upon he
7 had, he's by statute he was lawfully obligated to do those,
8 perform those duties and the unlawfully did not do those
9 duties so we will bind all those over.

10 MR. FLOOD: And, thank you. I presume that it's been
11 lengthy and I appreciate it but I presume that encompasses the
12 obstruction of the research mandated that Shawn McElmurry --

13 THE COURT: -- Yeah, I thought I touched on all that.
14 In fact --

15 MR. FLOOD: You did.

16 THE COURT: Well I think I did based upon the
17 totality of everything I've reviewed and what I've gone
18 through I know it's lengthy. This is unusual to have all that
19 but based on all of that.

20 MR. FLOOD: Thank you.

21 THE COURT: The obstruction is there, too.

22 MR. FLOOD: Thank you.

23 THE COURT: Anything else?

24 MR. FLOOD: Just one other issue, your Honor, if you
25 could as it relates to bond conditions. Could you please, I,

1 we set these bond conditions some time ago.

2 THE COURT: I can readdress bond if you want to
3 readdress bond.

4 MR. FLOOD: I would like to at least touch upon that.

5 THE COURT: Sure. Go ahead. In fact, actually I need
6 to set a bond. Actually, I don't know if I set one on count
7 four as it is. I denied the motion but go ahead. I can address
8 all four.

9 MR. FLOOD: Thank you. You've seen the gravity and
10 the seriousness and we look at two things, this Court does for
11 bond. The burden shifts one of the few times in criminal law
12 and it shifts over to the defense as it relates to why he
13 should have bond and it's their burden. You look at two
14 things. One, you look at the severity of the case and the
15 crimes that were committed, and two, the likelihood of return.
16 I don't have any issues with Nick Lyon returning to this
17 Court. I believe that he is not a flight risk. However, Judge,
18 the severity of this case and the seriousness of it you've
19 touched upon it and have laid out how systemic it was all the
20 way throughout from the top down. It has come to our attention
21 that we had a prior bond condition where Mr. Lyon was not to
22 be communicating with any of the employees as it relates to
23 the Flint water crisis and I understand that his press corps
24 has been talking and messaging out to the public as it relates
25 to the Flint water crisis. It came to my attention from a

1 witness yesterday. I can't vet this out today that the State
2 has now hired a new for FWIC, the Flint Water Task Force, the
3 State is bringing in some other entity to try to even disprove
4 that there was an outbreak potentially of Legionella. These
5 are all at the helm of the Director, the defendant. It merits
6 mention, your Honor, and I kind of sketched this out. It came
7 to my attention as you were reading or I mean going through
8 the ruling that I sent a letter, the Office of Special Counsel
9 sent out a letter to the defendant or Director in the Fall of
10 2016 saying that based on our material of being read we have
11 noticed that there may be criminality with your actions, and
12 to follow that up, that letter was published to the press the
13 following day. The next thing that happened, your Honor, was
14 in January/February prior to charges by the Office of the
15 Special Counsel and the Attorney General, in January/February
16 of '17 that is when you found the letter to the McLaren
17 Hospital of, and she testified about her intimidation but you
18 could see the pattern there. The charges didn't come out until
19 June of 2017. I say all of this, your Honor, because you had a
20 bond condition that there wasn't to be contact. It looks as
21 though there may have been or continues to be. In turn, all I
22 ask is that you reestablish those conditions as it relates to
23 no contact with the Department of Health and Human Services
24 employees relating to the Flint water investigation or
25 prosecution in this matter. That's, everything else I leave in

1 your discretion. I do not have an issue with Mr. Lyon being
2 here. I don't believe he's a flight risk. Any guns or
3 passports I'd ask that those be turned into the Court. If he
4 has any guns, any weapons of any sort that a third party or
5 the Court has them and his passport.

6 THE COURT: Okay, counsel?

7 MR. CHAMBERLAIN: Thank you, your Honor. First, we
8 respectfully waive Circuit Court arraignment. We tended to
9 your clerk an executed waiver form.

10 THE COURT: Okay, I will place that in the file.
11 Actually, I haven't even got to that point yet. We will get to
12 that in a minute, too.

13 MR. CHAMBERLAIN: As, I must confess I don't entirely
14 understand what Mr. Flood is requesting of the Court. The
15 Court, your Honor, did not set bond. It was Judge Perry who
16 set bond and we have a written order that is very cryptic as
17 they always are but we did have a colloquy on the record about
18 this in terms of Mr. Lyon's contact with members of the
19 Department. I've requested a transcript so that we know
20 exactly what the language is and unfortunately that has not
21 been produced. So I can only go on my personal recollection
22 which was don't talk to witnesses about their testimony and
23 that was fourteen months ago and I may be wrong. I don't hear
24 him alleging that. I hear him saying that the Department is
25 making certain decisions that affect the Flint water

1 situation. He still is in his position. He still has to do his
2 job and, you know, such a broad condition I think would be
3 inappropriate. May I respectfully suggest this? That this
4 matter be presented to the Circuit Court promptly by
5 prosecution and move for modification of bond, one, so that we
6 have a complete record and so that we have specific
7 allegations. Mr. Flood raised this with me a month ago and
8 said there's been some sort of contact. I said let me know and
9 I will investigate so I can respond. He never responded to me
10 so here I am at this hearing and, again, we have vague
11 allegations. I respectfully request the conditions remain in
12 place. Mr. Lyon has been faithful to conditions of bond and
13 there's no reason to alter them at this time. Thank you.

14 MR. FLOOD: Just briefly, your Honor. I have given
15 notice and I'm not privy to go talk to witnesses of that work
16 underneath him, underneath Director Lyon. That investigation
17 if there is violations pure and simple the Court said as I
18 understood it there is no contact with witnesses as it relates
19 to Flint water investigation. In other words, you can't try to
20 coerce, talk about what your testifying to. I mean we have it
21 on this record that there was a group meeting with all
22 witnesses coming together prior to charging in a room putting
23 an outline together of what happened in this case. So all I'm
24 suggesting is and requesting that we hold up the bond
25 condition. If you have to modify it to clarify for counsel,

1 clarify it to there is not to be for example contact with the
2 Public Information Officer, Angela Minicucci, who gives out
3 the information to the public by Director Lyon relating to
4 Flint. That there is no communications about testimony,
5 witness information relating to this group, Department of
6 Health and Human Services in Flint. That can be directed by
7 the second person in charge or the third person in charge,
8 however they want to do it but the last thing we should be
9 having is messaging going out to the public using the State
10 operative the Public Information Officer and Angela Minicucci
11 at the behest of Director Lyon.

12 MR. CHAMBERLAIN: Your Honor, I think the current
13 bond condition is sufficient. There's no reason to modify it.
14 These are just, these are vague allegations. The Department
15 needs to communicate through its Public Information Officer
16 and Mr. Lyon remains its Director.

17 THE COURT: I guess for my sake, this file has gotten
18 so big does somebody have a copy of the bond?

19 MR. FLOOD: I don't, your Honor. I asked for it
20 earlier and I didn't --

21 MR. CHAMBERLAIN: It has --

22 THE COURT: -- Can you tell me what it says right
23 now?

24 MR. CHAMBERLAIN: It has the standard no contact with
25 witnesses but when we're before Judge Perry I explained that

1 that's rather broad and we can clarify and what came out was
2 no, you can't talk to the witnesses about their testimony that
3 are employees of Michigan Department of Health and Human
4 Services.

5 THE COURT: And, and (sic) --

6 MR. CHAMBERLAIN: And, we believe that condition is
7 sufficient.

8 THE COURT: I tell you what it might be easier, as
9 long as we're -- I hate to do this to everybody. Let me take a
10 brief recess, see if I can find it. I just want to see what it
11 does say first.

12 (from 4:18 p.m. to 4:45 p.m., off the record)

13 THE COURT: Mr. Flood, Mr. Chamberlain, did you get a
14 chance to -- anything else regarding bond?

15 MR. FLOOD: Yes, your Honor. We've come to an
16 understanding that communication as it relates to anything
17 regarding the four charges that Mr. Lyon has been bound over
18 on that communication will go through counsel as opposed to
19 Mr. Lyon. If something comes up in evidence or in questions
20 the material would go through counsel not the Director, not
21 the Defendant. Is that accurate?

22 MR. CHAMBERLAIN: That's an accurate summary but Mr.
23 Willey took the time to write something out which I think is
24 more succinct.

25 THE COURT: I got, it's a little bit more succinct.

1 It's communication with Department of Health and Human
2 Services employees about the four counts and all it says
3 though is any information to be directed to legal counsel. I'm
4 not sure what you mean by information. Do you want me to
5 tailor that at all or is everybody --

6 MR. FLOOD: Well as it relates to --

7 THE COURT: To the Flint crisis, right? Is that --

8 MR. CHAMBERLAIN: Well the four charges.

9 THE COURT: The four charges. We will leave it at
10 that. I don't mind that. Does that make sense?

11 MR. FLOOD: I'm fine with that right now, your Honor.

12 THE COURT: So Mr. Lyon, since you're kind of getting
13 cut out of the picture but just so that you understand under
14 this bond condition is any, no communications with any of your
15 employees about the four counts, okay? And, any information
16 about those four counts has to be directed to legal counsel?

17 THE DEFENDANT: I understand.

18 THE COURT: Okay?

19 THE DEFENDANT: Yep (sic).

20 THE COURT: With regard to no weapons or firearms I
21 assume, did you have a firearm?

22 THE DEFENDANT: No.

23 THE COURT: No firearms? So no firearms in your
24 possession, and then passport. We kind of talked about that.
25 Is there a passport that's, that you have?

1 THE DEFENDANT: I have one.
2 MR. CHAMBERLAIN: You need to turn it in, in District
3 Court.
4 THE COURT: Okay, has to be turned in as well so no
5 passport. To be turned in to I'm just going to put Court for
6 the time. Anything else?
7 MR. FLOOD: Nothing at this time for the People,
8 Judge.
9 THE COURT: The amounts will stay the same.
10 THE DEFENDANT: Thank you.
11 MR. CHAMBERLAIN: Thank you, your Honor.
12 (at 4:47 p.m., proceedings concluded)