

# BAILIWICK NEWS

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## Due Process and Alcohol Abuse In Centre County: Summer 2017 Beta Theta Pi Preliminary Hearings

By Katherine Watt

This is Part 2 in a series started July 10, 2018, covering the aftermath of the Feb. 4, 2017 death of Penn State student Tim Piazza after he participated in an alcohol-fueled fraternity bid acceptance night on Feb. 2, 2017.

The series is sourced from court transcripts, legal filings, press releases, news reports and legal research. "N.T." denotes transcripts by date of hearing. All times are Eastern Standard Time, converted from transcript references to "camera time" as 37 minutes behind "real time" and to UTC time as four hours ahead of EST.

### *Preliminary Hearing Primer*

Preliminary hearings are authorized by Rule 540-543 of the Pennsylvania Rules of Criminal Procedure, directing that "If the issuing authority finds that the Commonwealth has established a prima facie case that an offense has been committed and the Defendant has committed it, the issuing authority shall hold the Defendant for court on the offenses on which the Commonwealth established a prima facie case. If there is no offense for which a prima facie case has been established, the issuing authority shall discharge the Defendant."

There are therefore two key things prosecutors need to prove: that a crime in fact happened, and that the actions of the defendant appear to meet the minimum legal standard required for a person to be held responsible for that crime.

Bound over charges move forward toward jury trial.

During a preliminary hearing, the Commonwealth's job is to present factual evidence and legal arguments to make a prima facie (on first appearance) case against each defendant for each element of each crime for which each defendant has been charged.

Prosecutors attempt to keep evidence presented in a very narrow window, the low burden of proof bar of preponderance of the evidence, or 51% likelihood. Selective presentation evidence not only allowed, it's standard operating procedure for the preliminary hearing phase.

Meanwhile, the defense attorney's job is to negate that evidence, or show the judge why it's not true or doesn't fit the legal elements. Negating prima facie evidence can involve showing counter-evidence that contradicts the Commonwealth's evidence, or showing that the evidence presented doesn't meet the legal standards for the crime alleged.

Correction: In the July 10 edition, *Bailiwick News* incorrectly reported that Ed Gilmartin and Ryan Foster – two of the 18 men originally charged in May 2017 with tampering with evidence – had been "dropped" from the case by the start of the preliminary hearing on June 12, 2017. Gilmartin and Foster waived their rights to a preliminary hearing under Pa. Rules of Criminal Procedure 541, which means they will be unable to later challenge the sufficiency of the prosecution's prima facie case. They are still being prosecuted.

The defense attempts to connect gaps in evidence to required portions of legal standards, and build a record that includes exculpatory evidence.

The prosecutor tries to block the defense, by objecting to any issue that doesn't directly relate to negating the prima facie case, and by objecting to any cross-examination questions that seem like legal argument.

The judge's role is to referee the verbal disputes, assess the evidence presented against the legal standards for each crime, and evaluate the arguments of the attorneys about how to apply the law to the facts. The judge must decide first, if each alleged crime was committed at all, and if so, if it's more likely than not that the charged individuals committed the crimes.

From a Constitutional perspective, preliminary hearings are designed to protect the due process rights of defendants.

From a public policy perspective, preliminary hearings are designed to conserve court resources, prosecutorial resources and defense resources, so that the whole criminal justice system isn't brought to bear on charges that lack basic plausibility.

### *Investigation & Evidence Collected*

For the Beta Theta Pi prosecutions, evidence was collected during an investigation that began on Feb. 3, 2017 and is ongoing.

Evidence included alcohol purchase receipts from Beer Belly's Beverage (258 West Hamilton Ave.), WR Hickey Beer Distributor (1321 East College Ave.), and from two Pennsylvania Fine Wine & Good Spirits retailers (230 West Hamilton Ave. and 1681 North Atherton St.).

The investigation revealed that Beta Theta Pi members purchased "just under \$2,000" worth of alcohol in the nine days before the Feb. 2, 2017 bid acceptance night. N.T. 7/10/17 at 105.

The investigation included standard police interviews of witnesses (including some who were later charged with

crimes), and a set of interviews conducted in secret before the Centre County Investigating Grand Jury.

In total, roughly 50 witnesses were interviewed, either by police investigators or before the grand jury. Of those, roughly half were interviewed by Detective Scicchitano.

By the beginning of the Summer 2017 preliminary hearing on June 12, 2017, police had obtained one to two weeks of video surveillance footage from 12 cameras located on the first and second floors of the house.

Detective David Scicchitano, the lead investigator for the State College Police Department, had watched most of the 12 videos that captured events from about 9 p.m. on Thurs., Feb. 2, to 11 a.m. on Fri., Feb. 3.

Although investigators originally believed the basement video camera systems were inoperable on the night of Feb. 2, by August 2017, they had learned that footage had been deleted, and the data had been sent to Federal Bureau of Investigation forensic technicians for recovery.

For the purpose of the Summer 2017 preliminary hearing, prosecutors excerpted about 3 hours of footage, with “snippets” from multiple first- and second-floor cameras.

Police obtained and reviewed text and browser search records from Piazza’s phone and from several witnesses, by consent search and by search warrant.

Police and prosecutors also reviewed autopsy reports from Dauphin County Deputy Coroner Lynn Choborda, Lancaster-based forensic pathologist Wayne Ross, and State College-based forensic pathologist Harry Kamerow.

### ***Evidentiary Disputes***

During the Summer 2017 preliminary hearing, there were multiple evidentiary disputes between defense attorney’s and then-Centre County District Attorney Stacy Parks Miller, the lead prosecutor.

Defense attorneys repeatedly requested that the Commonwealth turn over complete text evidence and complete video under Federal Rules of Evidence 106 and *Brady v. Maryland*, 373 U.S. 83 (1963), to enable defendants to assure themselves of authenticity of the evidence; obtain and use exculpatory material (material that tends to show defendants did not commit the alleged crimes); and improve their ability to cross-examine the sole prosecution witness: Detective Scicchitano.

Parks Miller consistently argued that the evidentiary burden – “preponderance of the evidence” or 51% or more – is extremely low at the preliminary hearing stage.

She argued that, at the preliminary hearing stage, defendants have no right to discovery; hearsay and circumstantial evidence may be considered by the judge; and that defendants have no right to confront and cross-examine non-testifying witnesses whose testimony is brought in through a detective’s testimony (i.e., Scicchitano testifying as to the contents of a pathologists’ report) if the expert will be available at trial.

She argued that Federal Rules of Evidence 106 and *Brady* don’t apply in Pennsylvania state court or at the

preliminary hearing stage, and even if they did, they wouldn’t apply to video excerpts or text record excerpts because neither qualified, in her view, as a “writing or recorded statement.” She further argued that the video excerpts presented during the hearing did not have to be formally entered into the record to enable defense attorneys to examine them.

She generally argued that defendants’ rights to exculpatory evidence, suppression of self-incriminating statements, introduction of evidence to contradict the prosecution’s theory of the case, cross-examination and impeachment of witness testimony and credibility – all those due process rights kick in *after* charges are bound over for trial, not before.

Parks Miller acknowledged that the situation was disadvantageous for the defendants: that the Commonwealth was “putting in admissions against their interests.” N.T. 7/10/17 at 69.

“We are here on a prima facie case and, yes, I am putting in what is damaging to their client,” she said. “I know that hurts them and there’s nothing they can do about it. These kind of arguments are for trial.” *Id* at 73.

“I know it upsets them that we can just put in incriminating evidence, but this is a prelim. The only evidence that is really is relevant for today’s purposes are things that go to a prima facie case.” *Id* at 79-80.

Magistrate Judge Allen Sinclair – the “issuing authority” for the preliminary hearing – consistently ruled in Parks Miller’s favor on the evidentiary disputes.

At one point he explicitly said “I’m not making [the Commonwealth] give [the defendants] the records. That’s for discovery when you give it out after. I’m not doing the trial now.” N.T. 8/10/17 A.M. at 134.

### ***Chronological summary as testified to by Scicchitano***

#### The Bid Acceptance Night Invitation

At 5:20 p.m. on Feb. 2, the 14 Spring 2017 pledges received a text from defendant Daniel Casey (Administrative Vice President and Pledgemaster) reading: “This is your pledge master from Beta. Be outside the kitchen doors behind the house at 9:07. Dress code is shirt, tie and jacket. See you then.”

At 8:19 p.m., the 14 pledges received a text from Kordel Davis reading: “Hello, pledge. Tonight starts your first of many nights in the Beta Theta Pi fraternity. Get ready to get fucked up and get ready for a long semester.” N.T. 6/12/17 Day at 126-127.

Scicchitano further testified that fraternity tradition was for newly initiated brothers, or “NIBs” who had gone through the rush, bid acceptance, pledging and initiation process during Fall 2016, to run the Spring 2017 obstacle course stations. N.T. 7/10/17 at 60.

NIBs on the night of Feb. 2 who were later charged, included Joseph Sala, Nicholas Kubera, Michael Bonatucci, Gary Dibileo, Luke Visser, Lars Kenyon and Parker Jax Yochim.

The 14 pledges duly appeared at the kitchen doors 220 N. Burrowes St. at 9:07. After a brief ceremony in the ground floor great room that included readings from Beta documents, Ryan Burk led the pledges down to the basement. Scicchitano testified he saw no evidence on the video that any pledges were asked for identification to prove that they were 21 and of legal drinking age. N.T. 6/12/17 at 77.

#### **SIDEBAR - Rush/Bid/Pledge/Initiation, IFC Role**

During the Summer 2017 preliminary hearing, prosecutors and defense attorneys both elicited testimony from Det. Scicchitano about how Penn State students typically join the Greek fraternity system and the role of the Penn State Interfraternity Council (IFC).

Scicchitano said Penn State students interested in joining fraternities must fill out an electronic application to the IFC, listing their date of birth, contact information and other data. The information about the candidate pool is sent by IFC to the fraternities, theoretically enabling the fraternity members to know which rushes are underage and which are legally allowed to drink. N.T. 7/10/17 at 51.

The fraternity members then contact the students interested in “rushing” or applying to become members of each fraternity, during the “rush” process.

The rush process takes about a week, during which the fraternity members and candidates get to know each other, often through alcohol-fueled parties at the frat houses. In Spring 2017, for example, Beta Theta Pi’s rush week included three invitation-based rush drinking events: Beer and Cigar Night on Sun., Jan. 22; Four Loko Night on Wed. Jan. 25; and Crate Race Night on Fri., Jan. 27. N.T. 7/10/17 at 97-104; 7/11/17 P.M. at 90.

After rush week, the fraternities consider whether they want to invite each student to join, and if so, they offer the student a “bid” through the IFC system.

The student then decides if he wants to accept the bid. If so, he accepts the bid through IFC registration system, which notifies the fraternity which students have accepted.

Using that database, the fraternity sends out invitations – in this case via text – to the students, for “bid acceptance” night activities.

Bid acceptance night for Beta Theta Pi in Spring 2017 included the short initiation ritual in the great room, the five- to 10-minute drinking obstacle course, followed by the social party with Trilogy women.

After bid acceptance night, rushes become “pledges.” They then participate in several weeks of additional activities – fraternity history, team building, etc. – often including excessive alcohol consumption. The pledge period culminates late in the semester with “hell week” followed by formal initiation, at which point the pledges become “newly initiated brothers” or NIBs.

Although no basement surveillance video footage was available during the Summer 2017 preliminary hearings, Scicchitano testified that during his investigation, witnesses told him that in the basement, the obstacle course began at about 9:52 p.m. Parenthetical numbers below indicate alleged “stations” for the obstacle course.

At 9:52 p.m., Casey and Joseph Sala supervised a vodka “lineup” (1). They handed the group a full bottle of vodka, and told them to finish the bottle by the time it reached the last man in line. Although the first pass of the bottle didn’t empty it, Casey and Sala reportedly supervised the group passing the bottle back up and down the line until it was empty.

Sala then led the 14 pledges upstairs, outside and around to a patio door. Casey was positioned just inside the door. Casey would knock on the door to signal Sala to open it, allowing pledges through one at a time.

Once inside, each pledge took a pull of vodka (2) from a bottle handed to them by Casey, the second station of what the prosecutors sometimes described as a six-station obstacle course.

The pledges then moved on to Nicholas Kubera, who handed them a can of Natural Light beer (3) which had been punctured to create a faster flow of beer through the hole, from which they drank, called “shotgunning.”

Gary DiBileo then presented the pledges with a bag of wine, from which each took a pull (4).

Ryan Burke led them back to the basement, where Luke Visser supervised a game of beer pong through which each pledge who didn’t get a ping-pong ball into a cup of beer was instructed to drink the cup (5).

According to Scicchitano, witnesses said the beer pong was followed by a group shotgunning of cans of Natural Light beer (6).

The sequence was completed by all 14 pledges within about eight minutes, ending at 10:00 p.m., at which point the social party in the basement began. Some witnesses said it lasted just four to five minutes. N.T. 7/10/17 at 121.

By the end of the obstacle course, each pledge had consumed an unknown portion of a first bottle of vodka shared by 14 pledges (1), and – if all the other stations were completed fully without spills, spitting or interruptions – one swallow from a second bottle of vodka (2), two cans of light beer (3) and (6), one swallow of wine (4) and a cup of beer at the beer pong station (5).

Casey, Sala, Kubera, DiBileo and Visser were charged with the crime of reckless endangerment – and the related charges derived from it – largely on the basis of their participation in inviting the pledges to the bid acceptance night (Casey) and their direct participation in obstacle course stations (Casey, Sala, Kubera, DiBileo and Visser).

#### 10 p.m. to 11:24 p.m. - The Basement “Social”

At 10 p.m., many but not all of the pledges, NIBs, and regular members went down to the basement for a large joint party – called a “social.”

There they were joined by women members of Trilogy, a Penn State THON “Special Interest Organization”

founded in 2009 after the Delta Delta Delta (Tri-Delta) sorority chapter at Penn State lost its charter from its national parent corporation in 2009 for hazing-related incidents. According to the Trilogy page at Penn State's Student Affairs website, Trilogy's mission is "to raise money for pediatric cancer through [Dance MaraTHON] by canning and alternative fundraising; as well as perpetuating friendship, unity and involvement among members by engaging in various social activities at Penn State."

Several of the pledges, NIBs and full members left the house shortly after the obstacle course to go home or to other parties.

Piazza was among those who went downstairs to the basement party.

Although basement video later became available, Scicchitano did not have access to it during the Summer 2017 hearings, so his testimony focused on events visible from the first- and second-floor surveillance cameras.

Scicchitano described two "checkers" – college-aged employees of St. Moritz, a security firm under contract with the Penn State Interfraternity Council – arriving at the front door of the house at 11:10 p.m. He said the checkers briefly walked through the first floor, went down to the basement, re-emerged from the basement door, filled out a form, and left the house by 11:13 p.m.

He later testified that the inspection forms were turned in to the IFC office, and destroyed before police investigators could obtain copies. N.T. 7/10/17 at 195-206.

Specific to Piazza's actions that night, Scicchitano testified that the video showed that at 11:17 p.m., Lars Kenyon walked with a visibly drunk Piazza from the basement door to the couch in the great room. N.T. 6/12/17 Day at 150.

At 11:20 p.m., Nicholas Kubera walked with Piazza from the great room through the dining room to the kitchen, and then back again to the couch. *Id* at 151.

At 11:22 p.m., Piazza got up himself and went through the lobby to the front door. *Id* at 152.

At 11:24 p.m., Piazza walked past Luke Visser toward the basement door. *Id* at 153.

#### 11:24 p.m. to 4 a.m. – Stair fall, interactions with Piazza

Scicchitano testified that the video showed Luke Visser pointing to his head at 11:24 p.m. and running to the basement door, although that specific clip wasn't shown during the preliminary hearing. N.T. 6/12/17 Day at 153-154.

Scicchitano testified that the first floor video showed Piazza being carried from the top of the basement steps to the great room couch at 11:24 p.m. by Luke Visser, Jonah Neuman, Ryan Burke and Greg Rizzo. *Id* at 155.

Scicchitano said Piazza appeared to be unconscious and limp, with a bruise on his lower left abdomen visible in the video.

Scicchitano opined that circumstantially, he believed the injury that caused the bruise occurred in the Beta house, although later he acknowledged that he had no evidence to rule out that the injury occurred before Piazza

attended bid acceptance night at Beta. N.T. 7/11/17 A.M. at 72.

Scicchitano testified that text evidence showed that about a half-hour after the fall – roughly 11:54 p.m. – Greg Rizzo sent a group text to the members of the fraternity, including NIBs but not including pledges – saying that Piazza had fallen 15 feet down a flight of stairs, "hair-first." N.T. 6/12/17 Day at 156-157.

Scicchitano further testified that the video and text evidence showed the following occurred overnight Feb. 2-3:

- 11:26 p.m. – Video: Greg Rizzo poured beer or water from a cup onto Piazza.
- 11:27 p.m. – Video: Ryan Burke crawled over Piazza and picked up Piazza's arm.
- 11:30 p.m. – Video: Jonah Neuman brought a yellow mop bucket into the room.
- 11:33 p.m. – Video: Jonah Neuman sat Piazza up and put a backpack full of books on him with help from Ryan Foster.
- 11:36 p.m. – Video: Ryan Foster sat on Piazza's legs.
- 11:49 p.m. – Video: Jonah Neuman sat on Piazza's legs
- 11:51 p.m. – Video: Kordel Davis looked at Piazza, gestured to his own head, and was pushed across the room by Jonah Neuman.
- 12:01 a.m. – Video: Parker Yochim entered and someone sat on Piazza again.
- 12:02 a.m. – Video: Daniel Casey slapped Piazza three times.
- 12:04 a.m. – Video: Jonah Neuman put a cushion behind Piazza's back.
- 12:08 a.m. – Video: Matthew Reinmund put a keg behind Piazza's legs.
- 12:09 a.m. – Video: John Kanzler put his hands up to stop Reinmund.
- 12:40 a.m. – Text: Ryan Foster to Brigid Gleeson: "Nope. Got puked on. One kid is out cold on a couch, and I have to deal with him because I'm one of the only sober ones." Gleeson replied: "Wait. What got puked on? Or you did? Is it a new guy?"
- [Text 83; time not stated in transcript] – Text: Foster to Gleeson: "I got puked on by this kid while I was taking care of him, making sure he was in a position to sleep."
- 1:00 a.m. – Text: Ryan Foster to Gleeson, "Yeah, trying to take [care] of another kid now. I'm one of the only sober kids in the house."
- 1:05 a.m. – Text: Foster to Gleeson: "I'm so pissed at the younger guys."
- 1:08 a.m. – Text: Gleeson to Foster: "Why aren't they helping?"
- 1:11 a.m. – Text: Foster to Gleeson: "They're too drunk."
- 1:12 a.m. – Video: Ryan Foster sat on a couch while Piazza was lying on a couch, others are in room covering their noses.

- 1:15 a.m. – Video: Ryan Foster picked up Piazza and “slammed him down on the couch.”
- 2:13 a.m. – Video: Jonah Neuman, Ryan Foster, Joseph Ems and Matthew Reinmund stood around Piazza at the couch.
- 2:25 a.m. – Video: Joseph Ems threw a pair of shoes toward Piazza’s “back or head area.”
- 2:26 a.m. – Video: Joseph Ems picked Piazza up by his arms; Matthew Reinmund adjusted the books in the backpack.
- 2:27 a.m. – Video: Ems and Reinmund “slammed him on his back on the couch” and Ems “slapped Piazza in the abdomen area with his right hand, open hand.”
- 3:49 a.m. – Text: Foster to Gleeson: “He keeps rolling around, and I’m not sure if he’ll throw up again, so I have to make sure he’s on his side.”
- 3:50 a.m. – Text: Foster to Gleeson: “He has a backpack filled with books on, but he’ll keep flopping around.”
- 3:53 a.m. – Text: Foster to Gleeson: “He threw up again in his sleep like 20 minutes ago.”
- 3:53 a.m. – Text: Yeah, but he’ll thrash in his sleep, and I don’t want him on his back.”
- 3:54 a.m. – Text: “He’s on a couch on his side, but every five minutes he tries to move to switch sides.”
- 3:58 a.m. – Video: Piazza appears to be alone, lying in “fetal position,” “rolling around.”

N.T. 6/12/17 Day at 159-164; 172-174; 180-194.

Parks Miller, during her direct examination of Scicchitano, opined that the men were “treating [Piazza] like a ragdoll,” and had an obligation to stabilize his head under her theory of the case, in which the men knew that Piazza had a head injury and that they had caused it, creating that obligation.

Defense counsel and Judge Sinclair pointed out that Scicchitano had not testified about any direct or circumstantial evidence that Piazza had a head injury. N.T. 6/12/17 Day at 167-170.

4 to 9:30 a.m. - Piazza intermittently unattended.

Scicchitano testified that the video showed that at 3:58 a.m., Piazza appeared to be alone in the great room. At about 3:59 a.m., Jerry Coyne entered the room, saw Piazza on the floor, rolled Piazza onto his side, put a blanket on him, and then left at 4:01 a.m. N.T. 6/12/17 Day at 195-196.

Scicchitano testified that for the next two hours, Piazza moved around, standing, staggering, running into a railing, falling down on the stone floor, and by 5:38 a.m. was lying on his back on the floor. *Id* at 197-201.

Scicchitano testified that at about 5:52 a.m., John Martines entered the great room, saw Piazza, left, came back with a cup at 5:54 a.m., looked at Piazza again, and walked upstairs. *Id* at 201.

Scicchitano testified that at about 6:03 a.m., Frederick Steimling entered the great room, saw Piazza standing up,

walked with Piazza to the great room. Piazza fell down and three stairs, and Steimling left. *Id* at 202.

Scicchitano testified that for another hour and a half, Piazza moved around, ran into objects, and fell to the floor repeatedly. *Id* at 203-204.

Scicchitano testified that at 7:33 a.m., Qobi Quano entered the great room, saw Piazza on the couch, took a photo or video of Piazza with his phone at 7:42 a.m., and then left through the patio door at 7:47 a.m., leaving it open. *Id* at 204-206.

Scicchitano later testified that between 7:49 a.m. and 7:53 a.m., Piazza got up from the couch, walked unsteadily to the patio door, closed it and went back to the couch. N.T. 8/10/17 AM at 173-176.

Scicchitano testified that at 7:55 a.m., Piazza headed toward the basement stairs, and moved out of camera range. N.T. 6/12/17 Day at 206-208.

Scicchitano testified that at about 10:07 a.m., some of the Beta members saw Piazza’s shoes in the great room and went to look for him. Daniel Erickson and Ryan Foster located Piazza shortly thereafter in the basement, unconscious behind the “away bar,” which was located an unspecified distance away from the foot of the basement stairs.

Scicchitano testified that Erickson and Foster, along with Kyle Pecci and Jonah Neuman carried Piazza up and out of the basement at about 10:07 a.m. and placed him on the couch in the great room. Scicchitano said the video showed Piazza’s eyes closed, apparently unconscious, with his body stiff and his fingers clenched into fists. Piazza was wearing a small black coat. N.T. 6/12/17 Day at 209-210.

Scicchitano testified that, over the next 41 minutes, the video showed a group of fraternity members standing and moving around Piazza while he lay unmoving on the couch: putting a blanket on him (10:08 a.m.), trying to separate his clenched fingers (10:11 a.m.), wiping Piazza (10:13 a.m.), reaching under the blanket to touch Piazza’s feet (10:18 a.m.), shaking Piazza (10:36 a.m.), attempting to close the jacket on Piazza (10:43 a.m.), wiping Piazza’s face (10:44 a.m.), trying to separate his clenched fingers again (10:44 a.m.), bringing a sweatshirt (10:45 a.m.), attempting to put the sweatshirt on him (10:46 a.m.), and searching for information on their cell phone browsers.

Scicchitano testified that from witness interviews, including with defendants, he learned that some of the men touched Piazza and noticed he was cold; some observed labored breathing. N.T. 6/12/17 Day at 211-231.

According to Scicchitano, Ryan McCann called 911 at 10:48 a.m., and several of the other fraternity members begin to pick up empty beer cups, cans and cases at that time. *Id* at 228-231.

During the interval from 10:07 a.m. to 10:41 a.m., several men appeared to make phone calls on their cell phones, including Ryan McCann (10:09 a.m.), Daniel Erickson (10:12 a.m.), Daniel Casey (10:38 a.m.), and Ed Gilmartin (10:38 a.m.).

Scicchitano testified that police obtained phone records from McCann and others, but was not asked by Parks Miller, and did not specify during his testimony, with whom

they were speaking during those four phone calls, or what was discussed. *Id* at 214.

Scicchitano testified that video showed a police officer arrive and enter the house at 10:52 a.m., followed by a second police officer and three EMTs at 10:59 a.m.

According to the transcript, Attorney Julian Allatt pointed out that the courtroom observed the video for another ten minutes “in silence,” during which emergency personnel were on-screen but did not appear to attempt “chest compressions,” or otherwise “perform lifesaving measures” on Piazza.

Scicchitano testified that by 11:16 a.m., the police and EMTs had left with Piazza in the ambulance. *Id* at 231-235.

Scicchitano said none of the fraternity members went to the hospital with Piazza, and none of them called his brother or his parents. *Id* at 235.

Resident advisor Tim Bream later testified that by about 11:30 a.m. or noon on Feb. 3 (15 to 45 minutes after the ambulance left) he was meeting at the fraternity house with about 30 active members and counselors from Penn State’s Counseling and Psychological Services.

During that meeting, Bream said, he, CAPS counselors and the father of one of the members “talked about staying off of social media, out of respect to Tim Piazza and with respect to the family.” N.T. 8/30/17 at 73-74.

Scicchitano testified that on February 3, after the 911 call, he went to Mount Nittany Medical Center at about 2 p.m. and briefly observed and photographed Piazza before Piazza was transferred to Hershey Medical Center by helicopter, where surgeons diagnosed spleen and brain injuries and attempted surgical intervention. Piazza died on Feb. 4.

#### Medical Reports/Autopsies

Scicchitano testified that Dauphin County Deputy Coroner Lynn Choborda and Dr. Wayne Ross completed a coroner’s postmortem report and postmortem on Feb. 7, 2017, listing Piazza’s cause of death as “multiple traumatic injuries” and manner of death as “accidental.” N.T. 6/12/17 Day at 35-36; N.T. 7/11/17 at 166.

Scicchitano testified that State College-based forensic pathologist Harry Kamerow filed a report on March 21, 2017, after his initial review of the police report, incident video footage, and the two autopsy reports. Scicchitano said Kamerow described Piazza’s death “a direct result of traumatic injuries, of which the most severe were head injuries.” N.T. 6/12/17 at 38-56.

Scicchitano said Kamerow’s report listed brain injuries, a “base of the skull fracture,” spleen injuries and multiple cuts and bruises to the head, chest, arms and legs.

Scicchitano also testified as to Kamerow’s retroactive calculations of Piazza’s Blood Alcohol Concentration (BAC) between 0.28 grams percent and 0.36 grams percent at the 11:24 p.m. fall down the stairs. N.T. 6/12/17 at 50-51.

Scicchitano said Kamerow’s report stated that it would be “reasonable to conclude” that the “injuries...were the direct result of [Piazza’s] ... fall down the basement steps

and multiple falls following [and] a direct consequence of his...drunkenness.” N.T. 6/12/17 at 38.

#### Summaries of Defendant-specific evidence

Late in the day on June 12, and then for a few hours in the morning on July 10, Parks Miller elicited testimony from Scicchitano to sum up the evidence against each defendant, which she argued comprised “prima facie” evidence each defendant had committed each crime with which he had been charged.

**Brendan Young** was charged with aggravated assault, involuntary manslaughter, simple assault, recklessly endangering another person, hazing, furnishing alcohol to minors, furnishing alcohol to minors or visibly intoxicated persons (47 P.S. 4-493), and tampering with evidence.

Scicchitano testified that Young was 21 years old as of February 2017, President of Beta Theta Pi and therefore a member of the Executive Committee, and had served as Vice President/Pledge Master in Spring and Fall 2016.

Scicchitano testified to evidence of Young’s awareness of prior semesters’ rush week and pledging period activities; plans to provide alcohol to minors and intoxicated individuals during the Spring 2017 rush week; the likely effects of the excessive alcohol consumption; Piazza’s fall down the stairs; and the legal implications of both calling for emergency medical help and of failing to call.

The evidence included Young’s visible presence at the house and participation in the bid night obstacle course activities as captured on surveillance videos; texts Young exchanged with his girlfriend (Maddie Miller) and co-defendant Daniel Casey and other members regarding alcohol purchases, event planning and care of intoxicated or injured pledges for fraternity events dating back to Spring 2016, up through Feb. 2, 2017; texts during and after the event; and browser searches after Piazza had been taken to the hospital. N.T. 6/12/17 Evening at 8-49; 7/10/17 at 16-35.

**Daniel Casey** was charged with aggravated assault, involuntary manslaughter, simple assault, recklessly endangering another person, hazing, furnishing alcohol to minors, furnishing alcohol to minors or visibly intoxicated persons, tampering with evidence, and underage drinking.

Scicchitano testified that Casey was 19 at the time and therefore underage himself, serving as Administrative Vice President/Pledge Master during Spring 2017, and thus a member of Executive Committee. Further, he had served as assistant pledge master during Spring and Fall 2016.

Scicchitano testified to the same points: that Casey knew of and participated in plans to provide alcohol to minors and intoxicated individuals during rush week; knew about the likely effects of the excessive alcohol consumption; knew about Piazza’s fall down the stairs; and knew about the legal implications of both calling for emergency medical help and of failing to call.

As with Young, the evidence presented against Casey included his presence and participation in the pledge activities Spring and Fall 2016 and his presence and participation in the Spring 2017 process, as shown in the

video excerpts. Evidence against Casey also included text messages Casey exchanged with Young and others regarding self-described “hazing” activities, basement cleanup and deletion of GroupMe chat records and Facebook pages, plus browser searches regarding the effects of alcohol and how to delete group chats. N.T. 6/12/17 at 49-61, 70-74, 7/10/17 at 16-35.

**Jonah Neuman** was charged with aggravated assault, involuntary manslaughter, simple assault, REAP, hazing, furnishing alcohol to minors and unlawful acts relative to liquor, and underage drinking.

Scicchitano testified that Neuman was 19 and a fraternity brother who had participated in bid acceptance night, pledging activities, hell week, and initiation in Fall 2015.

The evidence presented against Neuman included his age at the time; his past experiences with fraternity drinking events; his video-documented presence and participation in the obstacle course, specifically the beer shotgun station; seeing Piazza at the foot of the stairs after the 11:22 p.m. fall; helping carry Piazza up the stairs; seeing the bruise on Piazza’s abdomen; and helping to restrain Piazza by backpacking and sitting on his legs.

The interview evidence Scicchitano collected included Neuman’s and other witness statements that Neuman discussed calling 911 with Greg Rizzo, shortly after Piazza’s fall, and shoved Kordel Davis later, after Davis argued for calling 911.

Neuman also told Scicchitano during his interview that he had seen blood on Piazza’s face in the morning, after helping to carry Piazza up the stairs a second time, after which Neuman left the house. N.T. 7/10/17 at 36-52.

**Nicholas Kubera** was charged with aggravated assault, involuntary manslaughter, simple assault, REAP, hazing, furnishing, unlawful acts relative to liquor, and underage drinking.

Scicchitano testified that Kubera was 19 and a NIB.

Scicchitano interviewed Kubera during the investigation. Kubera told investigators what activities had been included in the obstacle course during his own bid acceptance night in September 2016, and his personal experience of intoxication that night, as well as his observations of other pledges’ intoxication levels, his understanding of the obstacle course as a “rite of passage,” and his awareness that none of the pledges were “carded,” (asked for identification proving their age to be over 21).

The evidence presented against Kubera included his age at the time; his statements confirming his prior awareness of fraternity drinking and its consequences; videotape of his presence and participation in the obstacle course running the beer shotgun station. N.T. 7/10/17 at 53-59.

**Michael Bonatucci** was charged with aggravated assault, involuntary manslaughter, simple assault, REAP, hazing, furnishing, unlawful acts relative to liquor and underage drinking.

Scicchitano testified that Bonatucci was 19 at the time and a NIB.

The video evidence presented against Bonatucci included footage of him walking through the lobby carrying a case of beer, and then helping Kubera hand beers to pledges at the shotgun station. N.T. 7/10/17 at 59-63.

**Gary Dibileo** was charged with aggravated assault, involuntary manslaughter, simple assault, REAP, hazing, furnishing alcohol to minors and/or intoxicated persons, and underage drinking.

Scicchitano testified that Dibileo was 20 at the time and also a NIB. Dibileo participated in a police interview and informed police he went through a similar obstacle course; stated the purpose of the obstacle course was “to get the pledges drunk fast;” and stated that no one was carded.

Evidence presented against Dibileo included a text “GroupMe” message sent from his phone to the other NIBs, recruiting people to run the stations at the obstacle course, and video footage of Dibileo running the wine bag station.

Scicchitano further testified that Dibileo told investigators he and Greg Rizzo had both advocated calling 911 shortly after the 11:24 p.m. fall, but that “they wanted to make a decision as the group – as a group they were deferring to the executive officers,” so neither called for emergency medical help.

Further evidence presented against Dibileo included text messages exchanged between him and Rizzo the evening of Feb. 3, regarding their view that Piazza’s intoxication was related to his being “hazed.” N.T. 7/10/17 at 63-68, 82-84.

**Luke Visser** was charged with aggravated assault, involuntary manslaughter, simple assault, REAP, hazing, furnishing to minors and/or intoxicated persons, and underage drinking.

Scicchitano testified that Visser was 19 at the time, a NIB, and that Visser told investigators that he ran the beer pong station in the basement. Visser further told investigators that he knew Piazza was under age 21, that he heard about Piazza’s 11:24 p.m. fall down the steps at and that he saw the bruise on Piazza’s abdomen. Evidence presented against Visser included his own statements to police, plus surveillance video. N.T. 7/10/17 at 85-90.

**Joseph Sala** was charged with aggravated assault, involuntary manslaughter, simple assault, REAP, hazing, and furnishing to minors and/or intoxicated persons.

Scicchitano testified that Sala was 19 at the time, a NIB, and was serving as the assistant pledge master for Daniel Casey. Through the investigation, other witnesses told investigators that Sala participated in a vodka “lineup” in the basement just after the bid acceptance ceremony at the start of the obstacle course.

Video evidence presented against Sala included footage of him opening a side door of the fraternity house for the new pledges to enter one by one and begin the obstacle course, and later providing wine in a wine bag to two underage pledges during the social party. N.T. 7/10/17 at 90-94.

**Michael Angelo Schiavone, Craig Heimer, Lars Kenyon and Parker Jax Yochim** were each charged with REAP, hazing, and furnishing alcohol to minors and/or intoxicated persons.

Scicchitano testified that text evidence and liquor and beer store receipts showed Schiavone and Heimer – both age 21 at the time – worked together to collect money from fraternity members, and used it purchase alcohol for fraternity events, including the Feb. 2 bid acceptance night and following social. Further, Heimer was interviewed by investigators and admitted that he knew he was purchasing the alcohol for events at the fraternity house, that some of the pledges were under age 21, and that the purpose of the obstacle course was “to get the pledges drunk in a fast amount of time.” N.T. 7/10/17 at 104-122.

Scicchitano testified that Kenyon was a NIB at the time of Piazza’s bid acceptance night, and that Kenyon also served on the social committee, responsible for planning events and arranging for alcohol purchases.

Scicchitano said Kenyon described the purpose of the obstacle course as a rite of passage, “initiation, and to get the pledges drunk and show them a good time.”

Kenyon further told police investigators that group text messages were deleted “to protect the house.”

Evidence presented against Kenyon included his awareness and participation in prior fraternity drinking events; his knowledge that many of the pledges were under the legal drinking age, and his admission to police that he participated in the deletion of texting groups in the days after the bid acceptance night. N.T. 7/10/17 at 122-135.

Scicchitano testified that Yochim was 19 at the time, was also a NIB, and also served on the social committee. Yochim, when interviewed by investigators, stated that he had gone through the pledging process – including the obstacle course – in Fall 2016; that he knew many of the Spring 2017 pledges were underage and no one was carded; that he knew alcohol would be provided and that he assisted in relaying text messages between Schiavone and Heimer regarding alcohol purchase orders.

The evidence presented against Yochim included his own statements to police and text records. N.T. 7/10/17 at 135-141.

**Ed Gilmartin, Ryan McCann, Lucas Rockwell, Braxton Becker and Ryan Foster** were each charged with tampering with evidence. As noted above, Gilmartin and Foster waived their right to a preliminary hearing.

McCann was 21 and lived in the Beta Theta Pi fraternity house. Scicchitano testified that McCann searched Piazza’s name and intoxication and injury topics such as “falling asleep after head injury,” and “cold extremities in a drunk person.” N.T. 6/12/17 at 89. N.T. 7/10/17 at 146-157.

Rockwell was also 21, and also lived in the fraternity house. Scicchitano testified that Rockwell was interviewed by police twice, and reported that he briefly touched Piazza while he was lying on the couch, then left the house for a few minutes to drive his girlfriend home, then returned and checked Piazza again. Rockwell acknowledged he noticed labored breathing, cold extremities, and a cut on Piazza’s face.

Rockwell told investigators that while the group was standing around Piazza, they were discussing the likelihood that the fraternity would be evicted from the house by the national parent corporation because they had alcohol in the house, served it to underage people, and one of the people had been injured while intoxicated and on the premises.

Evidence presented against Rockwell included his statements to police investigators, his awareness of prior drinking events and their results, and his presence on the surveillance video a few times during the Feb. 2 bid acceptance ceremony, after the obstacle course, and then again in the morning, a few minutes after Piazza was carried up from the basement. N.T. 7/10/17 at 141-146.

Scicchitano testified that Braxton Becker was 20 or 21 at the time, and serving as “house manager” whose responsibilities included the video system.

Evidence presented against Becker included his statements to investigators that the obstacle course was conducted during his own bid acceptance night in Fall 2014 and that he knew the fraternity would be under investigation related to Piazza’s death, along with text messages between Becker and others regarding Becker providing videotapes to investigators; the relationship between the obstacle course and pledge intoxication; and the deletion of Facebook pages and GroupMe text threads. N.T. 7/10/17 at 158-168.

**Joseph Ems** was charged with REAP, stemming from video evidence that he threw a pair of shoes toward Piazza’s head and slapped Piazza’s abdomen area with an open hand. N.T. 6/12/17 at 192-194.

The ‘Due Process and Alcoholism in Centre County’ series will continue throughout Summer 2018. Part 3 will cover cross examination and legal arguments during the Summer 2017 hearing.

Disclosure: The author is employed as a part-time paralegal by a Centre County law firm. All factual reporting is sourced from public documents and materials provided by readers, and all opinion and critical analysis are the author's own.

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