

Thor Frey 'didn't have it in him' to kill, family says on first day of second trial - UPDATE

By [Kathryn Brenzel | The Express-Times](#)

on January 03, 2013 at 5:52 PM, updated January 03, 2013 at 7:52 PM

The murder retrial of Thor Frey began today with repeated discussions of a thunder god's hammer.

A charm, described by witnesses as "Thor's hammer," was key to the 2009 trial that convicted Frey in the robbery and murder of a 75-year-old Phillipsburg woman.

Testimony in New Jersey Superior Court in Belvidere returned to the medallion that was found on the victim's living room floor and which authorities believe links Frey to the 2006 killing.

Frey, 48, formerly of [Bangor](#), was sentenced in 2009 after being convicted of killing Mary Bostian in her Thomas Street home. She died of suffocation. A state appellate court in 2011 vacated Frey's convictions on first-degree murder, burglary, robbery and criminal mischief charges. The court ruled that Frey should have been charged with receiving stolen property for accepting money rather than robbery, which had made him eligible for a felony-murder conviction.

[Donald O'Grady](#), of Phillipsburg, also was convicted in 2009 of the crime. He is serving a 50-year prison sentence.

Family: Thor innocent

Outside the courtroom, Frey's mother, Carol Ehrie, said she believes a lot of crucial information is being left out of the trial.

“There’s a lot of stuff they don’t want to bring out,” she said.

Ehrie, and her cousins, said they believe Frey is innocent.

He had a reputation when he was young, "but he didn't have it in him" to kill, said Maria Hoheland, a cousin of Frey's mother. "If I thought he was guilty of murder, I wouldn't be here."

Hammer medallions

Frey’s ex-wife, Naomi Frey, testified that she bought two hammer medallions, one of which Bostian’s son had hanging from the rear-view mirror of his car, and one that was given to Thor Frey, who was her estranged husband at the time. She said Bostian’s son, whom she was dating at the time, recognized the medallion found in the woman’s living room by detectives and showed detectives that he had the same one in his car.

Video and pictures of the home where authorities found Bostian bound and dead at the foot of her bed Aug. 18, 2006, were shown to the jury after opening arguments.

Steven Matuszek, a retired detective with the Warren County Prosecutor’s Office, navigated the video, which he filmed after responding to Bostian’s home. He showed Bostian’s disheveled room, covered with empty jewelry boxes. A sledgehammer was found outside Bostian’s room, and a hammer and screwdriver were left in the living room, he said. Matuszek also identified a trail of coins and white debris leading away from the home, presumably from the safe that authorities say Frey stole and carried from Bostian’s home.

Frey’s attorney, Michael Priarone, questioned the criminal investigation methodology of those who responded to Bostian’s home. He asked Matuszek

repeatedly if he'd tested the white substance found outside Bostian's home to determine whether it was pieces of wallboard or from the door of the safe stolen from the victim's home. Matuszek said he didn't have it tested and couldn't reach a conclusion about the substance.

Priarone also appeared critical of the second witness, prosecutor's office Detective Lt. Tom Carroll, when he asked if he'd searched the Internet for other places that sell similar Thor's hammer medallions, aside from the catalog that Naomi Frey had turned over to authorities.

"Despite the fact that you're investigating this murder, you never performed such a search," Priarone said.

Warren County Assistant Prosecutor Kelly Shelton interrupted Priarone.

"Mr. Priarone is implying that the lieutenant did something wrong," she said. Judge Ann R. Bartlett instructed Priarone to stop postulating in front of the jury. The day was full of similar interruptions on both sides, as well as several sidebars with the judge.

Thor Frey trial: Dog commands lead to disagreement, causing delays



By [Kathryn Brenzel | The Express-Times](#)

on January 04, 2013 at 5:41 PM, updated January 04, 2013 at 8:50 PM

Testimony halted today in [Thor Frey's](#) second murder trial after his attorney asked a witness to speak in Czech.

The dog that dragged Frey, 48, from the woods shortly after Mary Bostian was found dead in her [Phillipsburg](#) home responded only to Czech commands, said Sgt. Glenn Sipel, who works with the Palmer Township police K-9 unit.

Frey's attorney, Michael Priarone, asked Sipel to speak the words that led Sipel's dog to track Frey to a wooded area near the Travel Inn in Wind Gap, where Frey and Donald O'Grady Jr. were staying. He said speaking the words would help explain his client's state of mind and his understandable confusion at hearing a foreign language followed by a dog biting his calf.

Warren County Assistant Prosecutor Kelly Shelton said that Sipel shouldn't be forced to disclose the commands, as they are key to his job.

"It's OK, judge, we won't tell anyone," Priarone said to some laughter. Judge Ann R. Bartlett ruled that Sipel would have to return to state Superior Court in Belvidere on Monday to continue his testimony after the prosecutor and defense attorney had researched the questions. She dismissed the jury about 3 p.m.

Testimony today focused on where Frey was seen before and after Bostian was found in her Thomas Street home, dead at the foot of her bed with her hands and legs bound.

The night before, Aug. 17, 2006, Frey and [Donald O'Grady Jr.](#), who was sentenced to 50 years in 2009 for his role in the murder, were seen by witnesses drinking in celebration of Frey's birthday.

What can and cannot be said in Frey's retrial has proved a reoccurring issue in its first two days.

Frey's convictions on first-degree murder, burglary, robbery and criminal mischief charges were vacated in 2011, but the case is being presented to the jury as if this were its first time being tried. The first trial is referred to as a

“previous proceeding” when either prosecution or defense cites prior testimony.

An Express-Times headline referring to the proceeding as a “retrial” **delayed the start today** for nearly an hour, while Bartlett met with each jury member to see if they'd seen the newspaper and whether it affected their ability to serve on the trial.

The trial was able to commence, but Bartlett repeatedly warned jurors to avoid any form of media.

“If there is something that you see inadvertently, hear inadvertently, start to see inadvertently, just let me know,” she said.

A few witnesses placed Frey and O'Grady at the Snack Bar on Filmore Street in Phillipsburg the night before the murder. Shelton asked Eric Abel, an acquaintance of Frey's who was at the bar that night, if the pair seemed overly intoxicated or appeared to be falling down. He said he saw them leave when the bar closed at 2 a.m., but that they were able to walk on their own.

After Bostian was found, Phillipsburg police requested help from Pennsylvania State Police in finding Frey and O'Grady. Corporal James Bruchak, who was a trooper with state police in Belfast at the time, testified that he searched local hotels and motels, and it was at the Travel Inn that a maid recognized the trooper's picture of Frey, he said.

The maid pointed to Frey's motel room, which Bruchak noticed was open, he said. This discovery launched a search that led authorities to nearby woods. Frey was found with two room keys, a case containing a silver coin and a tube sock stuffed with \$2,400 cash.

Testimony is scheduled to resume at 9 a.m. Monday.

Thor Frey trial: Judge rules dog commands in Czech can be used, but attorney never asks



By [Kathryn Brenzel | The Express-Times](#)

on January 07, 2013 at 12:01 PM, updated January 07, 2013 at 12:14 PM

A Superior Court judge ruled today that the Czech "bite" command given to a police dog before the animal dragged [Thor Frey](#) from the woods could be spoken during Frey's retrial.

But when given the chance, Frey's attorney didn't ask the K-9 officer to speak the foreign language in front of the jury.

Day three of the second murder trial of Frey, 48, began with a hearing to determine if defense attorney Michael Priarone could ask Palmer Township Sgt. Glenn Sipel during his testimony in New Jersey Superior Court in Belvidere to use the Czech command issued to his dog. The [issue stopped testimony Friday](#), and Priarone indicated this morning that he still intended to ask Sipel to demonstrate the command.

Sipel said officers typically don't reveal the commands, as it could jeopardize officer safety.

"Our dogs are taught to listen to us, but on a rare occasion, they could be distracted," he said. "That millisecond could mean life or death for an officer. We just don't want a dead officer on the street."

Judge Ann R. Bartlett said that because Warren County Assistant Prosecutor Kelly Shelton planned to seek charges related to Frey's alleged failure to

comply with officer's commands, she would allow Sipel to say the Czech command for "bite." She said inclusion of the testimony could perhaps shed some light on Frey's initial resistance.

When the jury returned, Priarone asked Sipel very few questions, none of which specifically included the sound of the Czech command. Sipel told Shelton he was dressed in full police uniform and had asked Frey to stop fighting his dog, in English.

John Counterman, the son of Mary Bostian, who was found dead Aug. 18, 2006, in her [Phillipsburg](#) home, testified today that no one knew about the safe he kept in his mother's home except him, his mother, Frey's estranged wife Naomi Frey, who he was dating at the time; and his brother-in-law. Counterman said he was the only person who knew the combination to the safe, which contained roughly \$25,000 in coins and cash.

Frey was found with some of the contents of the safe in a wooded area near the Travel Inn in Wind Gap two days after Bostian was found dead, according to testimony.

[Donald O'Grady Jr.](#), who was sentenced to 50 years in 2009 for his role in the murder, was arrested about an hour after Frey was found.

The jury was to return at 12:30 this afternoon to hear additional testimony.

Thor Frey trial: Lack of police notes causes stir in third day of retrial



By [Kathryn Brenzel | The Express-Times](#)

on January 07, 2013 at 6:00 PM, updated January 07, 2013 at 8:12 PM

[Thor Frey](#)'s attorney wants to see rough police notes surrounding his client's case, but witnesses say they no longer exist.

Phillipsburg police Detective Sgt. Michael Swick testified today during Frey's second murder trial that he could not recall if he took notes as he was surveying Mary Bostian's home after she was found dead. He said he knew that they no longer existed, if they ever had.

Defense attorney Michael Priarone pointed out a discrepancy in Swick's narrative report of Aug. 18, 2006, which flowed in chronological order until Swick addresses Thor's hammer medallion found in Bostian's living room. The medallion, which authorities believe links Frey to the murder, was out of place in the report and only appeared after Detective Lt. Tom Carroll, of the county prosecutor's office, "supposedly" brought it to Swick's attention, Priarone said.

Warren County Assistant Prosecutor Kelly Shelton picked up on the suggestion.

"I'm going to ask a question Mr. Priarone didn't ask," she said in New Jersey Superior Court. "Did you plant the medallion? Did you see Detective Carroll plant the medallion?"

The answers to these and similar questions were all "no."

The absence of police notes in this case came up Thursday when Priarone asked Carroll similar questions. Carroll said that his department's policy was to discard notes once a formal report was written.

After the jury was dismissed for the day, Priarone cited a 2011 state Supreme Court decision barring law enforcement from destroying their notes — a potential boon for defense attorneys seeking inconsistencies between notes and official reports.

Shelton argued that the murder investigation took place long before the court's ruling. Judge Ann R. Bartlett indicated that they would further discuss the matter after both sides researched the issue.

The third day of Frey's retrial **began with a hearing** to determine if a Czech command issued to a Palmer Township police dog could be spoken in court. Bartlett ruled that hearing the language could give the jury insight into Frey's state of mind at the time, when he was hiding from police and suddenly bitten by a dog. Despite the ruling, Priarone didn't ask the officer to replicate the command.

Testimony today focused heavily on Frey's arrest and the recovery of possessions stolen from Bostian's home. Police found Frey with some of the safe's contents in a wooded area near the Travel Inn in Wind Gap two days after Bostian was found dead, according to testimony.

Authorities recovered the safe in a wooded area on True Blue Road in Washington Township, Pa., along with some of the items it contained, including a 9mm pistol, Plainfield Township police Officer Christopher Ryan said.

Donald O'Grady Jr., appeared at the motel about an hour after Frey was arrested. O'Grady, who was sentenced to 50 years in 2009 for his role in the murder, and another man were arrested after police found they both had cocaine, according to testimony.

The retrial follows a state appellate court's 2011 decision to vacate Frey's convictions on first-degree murder, burglary, robbery and criminal mischief charges.

The case is being heard by a new jury, whose members have voiced confusion about the names mentioned during testimony. Shelton had Swick draw a diagram for jurors, illustrating the somewhat complicated relationships involved in the case.

Swick said Frey was dating Robin O'Grady, the ex-wife of his co-defendant, at the time of the investigation. Two days after Frey's arrest, Swick searched the couple's apartment, and found a picture of Frey wearing a medallion identical to the one left in Bostian's living room. He also found another hammer pendant — designed differently — in a jewelry box.

Bostian's son John Counterman was one of the first to recognize the medallion found in his mother's home. He testified that no one knew about the safe he kept in his mother's home except him, his mother, his brother-in-law and Frey's estranged wife Naomi Frey, who he was dating at the time.

Counterman said he was the only person who knew the combination to the safe, which contained roughly \$25,000 in coins and cash.

The trial will resume Tuesday at 9 a.m. Shelton indicated that the remainder of her witnesses would take at least another day to testify.

Thor Frey, in 2006 interview, claims he was drunk, slept on victim's backyard during robbery



By [Kathryn Brenzel | The Express-Times](#)

on January 08, 2013 at 7:20 PM, updated January 09, 2013 at 11:45 AM

[Thor Frey](#) says he was drunk the night Mary Bostian was murdered.

It was Frey's birthday and his friend, Donald O'Grady Jr., insisted they go to the Snack Bar in Phillipsburg.

Frey was already, by his own admission, "really, really, really drunk," according to a 2006 audio interview played today in New Jersey Superior Court in Belvidere.

The interview, conducted by Lt. Stephen Speirs, a now-retired detective with the Warren County Prosecutor's Office, was played for the jury after Speirs testified on the fourth day of Frey's murder retrial.

Frey said in the interview that he and O'Grady had been drinking all night and that O'Grady led him to Bostian's Phillipsburg home. Frey said he'd been stumbling and vomiting, and that he passed out in Bostian's backyard. He told the detective that he wasn't aware of what O'Grady did inside, but that he helped carry the safe from the yard to O'Grady's car.

"All I know is, I woke up, and there was the safe that needed to be picked up," he said in the interview. "All the scientific proof shows I was never in the house. I never went past the yard, and that's a fact. I never touched that lady. I never did nothing."

Frey said that he thought people were trying to blame the entire incident on him. At the time, Frey said, he was recovering from an arm injury from a dog bite and couldn't have carried the safe down Bostian's stairs.

Frey also told the detective that the Thor's Hammer medallion found in Bostian's living room was not his. Frey said his estranged wife at the time, Naomi Frey, told him about the safe in Bostian's home.

The safe belonged to the elderly woman's son, John Counterman, who was dating Naomi Frey at the time. Frey said in the interview that he told O'Grady about the safe.

A judge sentenced O'Grady in 2009 to 50 years in state prison for his role in the 75-year-old's death. A judge also sentenced Frey in 2009, but a state appellate court in 2011 vacated the murder, burglary, robbery and criminal mischief convictions. The court ruled the robbery charge should be downgraded to receiving stolen property.

The interview matched and contradicted other testimony in Frey's second trial. Previous witnesses testified that they'd seen Frey drinking but that he didn't seem overly intoxicated.

Frey's former girlfriend and O'Grady's ex-wife, [**Robin O'Grady, testified today**](#) that Frey told her he went into the house on Aug. 18, 2006, but that he didn't hurt Bostian.

Robin O'Grady said Frey returned the next morning to their Bangor apartment nervous, and that she could tell he'd been drinking. She said Frey later watched the news covering the discovery of Bostian's body in her Thomas Street home.

O'Grady said Frey told her, "That's the lady we robbed." She said Frey gave her \$800, which she believed was from his construction job.

Several evidence hearings were held throughout the day, including one focusing on witness Daniel Stracquadaine.

Stracquadaine met Frey and O'Grady at the Travel Inn in Wind Gap days after Bostian was killed. Stracquadaine drove O'Grady to the wooden area where the stolen safe had been dumped, thinking he was giving the man a ride to the bank, according to testimony.

Police arrested the two men when Stracquadaine drove up to the motel in his maroon Camaro.

Defense attorney, Michael Priarone, asked the judge if he could question Stracquadaine about robbery and domestic violence charges he faces in New York. Priarone asked if Stracquadaine notified his attorney about being a witness in the trial and discussed getting a break for cooperating with authorities.

Stracquadaine said Warren County Assistant Prosecutor Kelly Shelton had made no offers for his cooperation.

Though Judge Ann R. Bartlett permitted him to ask about the charges, Priarone didn't ask Stracquadaine in front of the jury. This is the second time in the trial that Priarone hasn't broached a subject after an evidence ruled in his favor. **Friday he didn't ask a witness to speak a Czech command for "bite" after the judge said he could.**

Priarone asked instead if the prosecutor's office had offered to dismiss drug possession charges in exchange for his cooperation in 2006. Stracquadaine said they hadn't, but acknowledged that though authorities found cocaine on him when he was arrested with O'Grady, he didn't ultimately face any charges.

Thor Frey trial: Did it take two to rob and murder Mary Bostian?



By [Kathryn Brenzel | The Express-Times](#)

on January 10, 2013 at 7:24 PM, updated January 10, 2013 at 8:17 PM



[Enlarge](#)[Bill Adams | The Express-Times](#) Thor Frey looks back at friends and family sitting in the gallery during his trial. Express -Times Photo | BILL ADAMS [Thor Frey's second murder trial - Jan. 4, 2013](#) gallery (11 photos)

Two realities exist in the murder retrial of [Thor Frey](#): the real world and "Thor Frey's world," said Warren County Assistant Prosecutor Kelly Shelton.

Shelton argued today during closing statements that the Frey depicted in the latter, an extremely drunk man who passed out in Mary Bostian's lawn as another man single-handedly killed and robbed the Phillipsburg woman, didn't exist.

"Why would Donald O'Grady Jr. take a liability with him?" she asked in New Jersey Superior Court in Belvidere. "Why would Donald O'Grady need help from the drunk, throwing-up guy, if he was able to carry that safe from the house all by himself?"

She said the night in 2006 that 75-year-old Bostian was killed, two people worked together to find and take the safe out of her Thomas Street home. She said most witnesses who saw Frey on his birthday said he had been drinking but that he was functioning.

Closing arguments lasted more than an hour for the prosecution and defense and followed a day of multiple delays, [including two evacuations of the courthouse after fire alarms went off](#). Shelton and Frey's attorney, Michael Priarone, focused their statements on a robbery charge, which makes Frey eligible for a felony murder conviction.

If Frey is found not guilty of robbery, the jury then would only look at lesser charges, including burglary, receiving stolen property, criminal mischief and flight.

A state appellate court in 2011 vacated Frey's 2009 conviction on first-degree murder, burglary, robbery and criminal mischief. The court ruled Frey should have been charged with receiving stolen property, rather than robbery.

Evidence questioned

Priarone blamed the murder on O'Grady, who was sentenced in 2009 to 50 years in state prison for his role in the crime. He said that no scientific evidence linked his client to the inside of Bostian's home, an impossibility if he actually did go inside, considering the long length of Frey's hair and the fact that his client was on medication that was causing him to lose the locks, Priarone said.

"If on a sweaty, August night, ransacking someone else's home, and (a Thor's Hammer pendent) falls from his neck, wouldn't there be something of his on it?" he said. "He would have to be walking around in a NASA suit to not leave something behind."

He said the statement Frey gave to a detective in 2006, which was played for the court earlier this week, contained the truth of what happened. Frey became extremely drunk the night of his birthday, Aug. 17, and left the Snack Bar in Phillipsburg with O'Grady. He fell asleep outside Bostian's home and woke up when O'Grady brought the safe outside, according to the interview. Priarone demonstrated that one person could move the safe by sliding Bostian's safe in front of the judge and said that even with the added 50 or 60 pounds of coins and other possessions in the safe, the feat could be done.

"If a 60-year-old, overweight, out-of-shape counsel can move it, Donald O'Grady, the construction worker, the field hand, could do it," Priarone said, his breath noticeably unsteady.

He said that the hammer medallion found in Bostian's living room, which led authorities to his client, wasn't the same charm that Frey was wearing in a picture found in his apartment. Priarone argued that there are multiple ways the medallion ended up in the home.

Priarone again cited a discrepancy in a Phillipsburg detective's report that showed the discovery of the medallion out of chronological order. He said this, and the [destruction of notes](#) by two Warren County detectives, is cause for concern in depending on evidence collected by authorities.

"Don't judge my client because he did bad things. Don't judge him because he helped move a safe. You can convict him for that. It's called theft and receiving stolen property," he said. "But it's not murder, and it's not robbery."

Role of a witness

Priarone also questioned possible motives in Robin O'Grady's testimony Tuesday. He said O'Grady, Frey's girlfriend at the time and the ex-wife of Donald O'Grady Jr., could have been protecting family members, and cited differences between her initial reports to police and her recent testimony in regards to knowledge of a safe.

Shelton disagreed. She said Robin O'Grady's testimony about what Frey said to her about the robbery after he returned home Aug. 18 appeared truthful.

"In any relationship, who do you confide in? Who more natural to come home and confide in after he did something wrong than his girlfriend?" she asked. "If she had a bias about Thor Frey, she would have dropped the hammer on him."

Shelton, often imitating Priarone's preceding arguments, employed two diagrams to demonstrate the relationships of parties involved in the case and the evidence she alleges involves Frey in the robbery. In addition to the medallion, she said a sock that contained \$2,400 found with him after a police dog tracked him down and the fact that Frey had \$800 to give O'Grady were hints that he was in the room.

She said that Bostian's stairs would have shown more damage than a few scratches if O'Grady had moved the safe himself, which she said was impossible given that authorities place the timing of the robbery and murder at two hours. She said that Frey told O'Grady about the safe and then the two decided to break into Bostian's home. She said the evidence, though not scientific, points to two men working together the night Bostian was murdered.

"There's no scientific evidence that anyone was in that house. Does that mean that the crime didn't occur?" she asked. "Do you really think Mrs. Bostian did this to herself?"

