

STATE OF NEW HAMPSHIRE

COÖS SS.

SUPERIOR COURT

State of New Hampshire

v.

Volodymyr Zhukovskyy

Docket No. 214-2019-CR-78

MOTION FOR SERVICES OTHER THAN COUNSEL

NOW COMES the Defendant, Volodymyr Zhukovskyy, by and through counsel, Jay Duguay and Steve Mirkin, Public Defenders, and respectfully requests the Honorable Court approve the expenditure of \$1000 for a second deposition of Donna Papsun.

In support of this Motion, the following is stated:

1. Mr. Zhukovskyy is before the Honorable Court charged with several offenses related to a motor vehicle accident that occurred on June 21, 2019 in Randolph, NH.
2. The State has indicated its intent to call Donna Papsun as an expert witness at trial.
3. On July, 21, 2021 Donna Papsun was deposed in this matter. During the deposition defense counsel learned that certain documents that were requested by the defense and provided by NMS labs were the incorrect documents.
4. NMS labs provided the correct document on August 6, 2021.
5. After submitting the documents for defense expert review it became clear that it was necessary to conduct a second deposition of Donna Papsun based on the new information contained in those documents.

Granted

/s/ Peter H. Bornstein

Honorable Peter H. Bornstein

November 18, 2021

Clerk's Notice of Decision
Document Sent to Parties
on 11/18/2021

6. That deposition was conducted via WebEx on October 28, 2021. The expert fees for that deposition were \$625 and the transcription fee was \$375.
7. The defendant has the right to depose the State's expert witnesses in felony cases. N.H. Rev. Stat. Ann. § 517:13 (III); State v. Martin, 142 N.H. 63, 65 (1997).
8. Mr. Zhukovskyy has a constitutional right to effective assistance of counsel and to a fair trial pursuant to the Sixth and Fourteenth Amendments to the United States Constitution. In addition, Mr. Zhukovskyy has a constitutional right to be protected against a denial of equal protection pursuant to the Fourteenth Amendment to the United States Constitution and Part 1, Articles, 1, 12, and 15 of the New Hampshire Constitution. Effective assistance of counsel and the right to a fair trial requires, when appropriate, that an indigent defendant be provided with funding for services other than counsel.

“The right to counsel, as guaranteed by the Sixth Amendment and Part 1 Article 15 of our own constitution, would be meaningless if counsel for an indigent defendant is denied the use of the working tools essential to the establishment of a tenable defense because there are no funds to pay for these items.” [citations omitted]

State v. Robinson, 123 N.H. 665, 669 (1983). The services for which money has been requested are essential for counsel to provide effective assistance of counsel and to ensure the Defendant’s right to a fair trial.

9. The equal protection clause guarantees that an indigent Defendant be provided “with the basic tools of an adequate defense or appeal, when these tools are available for a price to other prisoners.” Britt v. North Carolina, 404 U.S. 226, 227, 92 S.Ct. 431, 433 (1971); *see* Douglas v. California, 372 U.S. 353, 83 St.Ct. 814 (1963) (indigent defendant entitled to court-appointed counsel to represent

him on an appeal of right); Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956) (indigent defendant entitled to a transcript of lower proceedings at State expense when transcript necessary to effect appeal of right); State v. Cofske, 129 N.H. 133 (1987) (indigent defendant entitled to free transcript of competency hearing when there was a demonstrated need and no reasonable alternatives); State v. Shute, 122 N.H. 498 (1982) (indigent defendant entitled to free transcript of prior trial for use at new trial).

10. The total cost of taking and transcribing the deposition above is \$1000¹.

WHEREFORE, the Defendant respectfully requests the Honorable Court:

- A. Approve the expenditure of funds in the amount of \$1000 to pay for the cost of the deposition of Donna Papsun;
- B. All other relief deemed necessary and just.

Respectfully submitted,

/s/Jay Duguay
Jay Duguay
N.H. Bar Identification No. 20347
N.H. Public Defender
134 Main Street
Littleton, NH 03561
(603) 444-1185

Steve Mirkin
NH Bar ID#1771
N.H. Public Defender
485 NH Route 10
Orford, NH 03777
(603) 353-4440

¹ \$625 deposition fee for Donna Papsun, \$375 transcription.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were forwarded this 17th day of November, 2021, to John McCormick, Coos County Attorney.

/s/Jay Duguay _____
Jay Duguay, Esq.