

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 grant this Motion for depositions of Michael Sorenson and Richard McAlister of the Crash Labs and to authorize the expenditure of funds necessary for such.

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 Mr. Sorenson and McAlister as expert witnesses at trial. The Defense deposed both Mr. McAlister and Mr. Sorensen but they have since issued a supplemental report in response to the new expert report issued by defense expert William Howerton. Additionally, Mr. Howerton's report has significantly changed our understanding of how the accident occurred and it is necessary to inquire of the State's experts in light of that new understanding.
3. 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).

**Granted**

/s/ Peter H. Bornstein  
Honorable Peter H. Bornstein  
June 14, 2022

Clerk's Notice of Decision  
Document Sent to Parties  
on 06/14/2022

4. 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.

5. 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).

6. An estimate for the total cost of taking and transcribing the deposition above is \$5000<sup>1</sup>.

WHEREFORE, the Defendant respectfully requests the Honorable Court:

- A. Approve the expenditure of funds in the amount of \$5000 to pay for the cost of those depositions;
- B. All other relief deemed necessary and just.

Respectfully submitted,

/s/Jay Duguay  
Jay Duguay  
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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing were forwarded this 22th day of October, 2021, to John McCormick, Coos County Attorney.

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<sup>1</sup> \$3000 deposition fees to Crash Labs, \$2000 transcription fee.

/s/Jay Duguay\_\_\_\_\_

Jay Duguay, Esq.