

THE STATE OF NEW HAMPSHIRE

COÖS, SS.

SUPERIOR COURT

The State of New Hampshire

v.

Volodymyr Zhukovskyy
214-2019-CR-78

MOTION IN LIMINE #8: Introduction of the Defendant's Prior Conviction for Impeachment Under N.H. R. of Evid. 609(a)(2)

NOW COMES, the State of New Hampshire, by and through the Office of Coös County Attorney and the Office of the Attorney General, and respectfully requests this Honorable Court grant its Motion *in Limine*: Introduction of the Defendant's Prior Conviction for Impeachment Under N.H. R. of Evid. 609(a)(2) at trial filed in the above-captioned matter. In support thereof, the state submits the following:

1. On June 21, 2019, The defendant caused a motor vehicle crash that resulted in the deaths of seven people and serious bodily injury to another, and also endangered the lives of other oncoming motorcyclists. The defendant was arrested and charged with seven counts of negligent homicide on June 24, 2019. He was subsequently indicted and currently stands charged with seven counts of manslaughter; seven counts of negligent homicide (DUI); seven counts of class B felony-level negligent homicide, and one count of aggravated driving while intoxicated (serious bodily injury); and reckless conduct.

2. Defendant has pleaded not guilty, and trial in this matter has been tentatively scheduled to commence on November 29, 2021.

3. In the event that the defendant testifies at the trial, the State will seek to impeach him by introducing evidence of his prior conviction. On June 25, 2014, the defendant plead guilty in the Stow Municipal Court in Stow, Ohio, to the charge of furnishing false information to officer issuing traffic ticket, a first degree misdemeanor, in violation of Ohio Revised Code 4513.361. See copy of certified conviction annexed to this motion as Exhibit A; and, Exhibit B, a copy of the police report documenting the conduct that gave rise to the charge and conviction.

4. Ohio Revised Code 4513.61(a) states that “No person shall knowingly present, display, or orally communicate a false name, social security number, or date of birth to a law enforcement officer who is in the process of issuing to the person a traffic ticket or complaint.” The text of the statute is attached as Exhibit C.

Legal Argument

5. New Hampshire Rule of Evidence 609 permits the attack of a witness’s character for truthfulness by evidence of criminal conviction. N.H. R. of Evid. 609(a). The rule lays out circumstances where a criminal conviction shall be admitted to attack credibility, stating: “for any crime regardless of the punishment, the evidence *must be admitted* if the court can readily determine that establishing the elements of the crime required proving – or the witness’s admitting – a dishonest act or false statement.” N.H. R. of Evid. 609(a)(2) (emphasis added).

6. The clear language of rule 609(a)(2), unlike the limiting or qualifying language found in rule 609(a)(1)(B), allows for unqualified admission of a certified conviction where the witness has admitted to a “dishonest act or false statement,” stating

that such evidence *must be admitted* if the court can readily determine that the elements of the crime require proving that the witness was dishonest. *Id.*

7. A conviction for furnishing false information to a police officer is by its very nature illustrative of dishonesty and falls squarely within the rule as it constitutes a “false statement,” in an effort to deceive a law enforcement office in order to thwart issuance of a traffic ticket or complaint, or otherwise curtail an official investigation. Here, the defendant furnished an identification card with a different name to the police officer who had pulled him over, before admitting that his true name was Volodymyr Zhukovskyy, but only after the officer found an identification card with that name on it. See Exhibit B.

8. At trial, should the defendant testify, the State would seek to introduce evidence of his prior conviction for furnishing false information to a police officer by questioning the defendant, and by introducing the certified conviction, attached as Exhibit A, as an exhibit.

Conclusion

9. Accordingly, as all crimes involving dishonesty or false statement are admissible, the State moves to admit the certified conviction in the event that the defendant testifies at trial.

10. Attorney Jay Q. Duguay, representing the defendant, was contacted regarding this motion and objects.

WHEREFORE, the State requests this Honorable Court:

- A. Grant State's Motion in Limine,
- B. Permit the State to question the defendant regarding his conviction and introduce the attached certified conviction, Exhibit A, at trial, if the defendant testifies at trial; and,
- C. Grant any other and further relief as may be deemed just.

October 22, 2021

Respectfully Submitted,
STATE OF NEW HAMPSHIRE

/S/ John G. McCormick
John G. McCormick, Esq.
Coos County Attorney
NH Bar # 16183
Office of the Coos County Attorney
55 School St. Suite 141
Lancaster, NH 03584
(603) 788-5559

/S/ Scott D. Chase
Scott D. Chase, Esq.
Assistant Attorney General
NH Bar #268772
Office of the Attorney General
Criminal Justice Bureau
33 Capitol Street
Concord, NH 03301-6397

/S/ Joshua L. Speicher
Joshua L. Speicher, Esq.
Assistant Attorney General
NH Bar #273020
Office of the Attorney General
Criminal Justice Bureau
33 Capitol Street
Concord, NH 03301-6397

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has this day been forwarded via electronic filing to Attorney Jay Q. Duguay, NH Public Defender, 134 Main Street, Littleton, NH 03561.

Date: October 22, 2021

Respectfully Submitted,
STATE OF NEW HAMPSHIRE

/S/ John G. McCormick
Office of the Coos County Attorney

EXHIBIT A

Case Number: 14 CRB 1758 W CMS 1758 Date: 6 / 25 / 14

ACKNOWLEDGMENT AND WAIVER OF RIGHTS

I am before a Judge or Magistrate of the Stow Municipal Court on the charge(s) of:

DUS: False Info: [REDACTED] MUNICIPAL COURT OF

2014 JUN 25 A 11:41

STOW, OHIO

1. I understand the charge(s) against me and the maximum penalties that may be imposed.
2. I have the right to a jury trial or trial to the Court.
3. I have a right to confront my accusers and cross-examine them.
4. At trial, I have a right to present witnesses of my own and to use the Court's power to compel witnesses to attend Court proceedings, but I cannot be compelled to testify against myself.
5. I have the right to make the prosecution prove each essential element of the offenses with which I am charged beyond a reasonable doubt.
6. I have the right to have an attorney represent me and if I am determined to be unable to pay for an attorney, one will be provided.
7. I understand that if there is a potential for civil liability or the complaint against me fails to properly charge an offense, I may plead No Contest and submit myself to a finding of Guilty or Not Guilty by the Court.
8. I understand that the charge(s) carries a possible jail sentence.
9. Certain offenses, such as **Operating a Vehicle Under the Influence (OVI), Driving Under Suspension (DUS), Domestic Violence**, or _____ will have enhanced penalties on a second or subsequent conviction.
10. A record of my conviction will be reported to the Bureau of Motor Vehicles and/or law enforcement agencies.

11. If I am not a citizen of the United States, I understand that conviction of the offense to which I am pleading guilty or no contest may have the consequence of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

12. In the event that imprisonment is a possible penalty for the offense with which I have been charged, I consent to this matter being referred to a Magistrate and further consent to a Magistrate sentencing me.

13. Pursuant to Ohio Revised Code section 2953.033, you are advised that if you enter a guilty plea or plea of no contest to a misdemeanor crime involving violence where you are or were:
- A spouse, person living as spouse, former spouse of the alleged victim;
 - A parent or child of the alleged victim;
 - A parent or child of a spouse, person living as spouse, or former spouse of the alleged victim; or
 - The natural parent of any child of whom the alleged victim is the other natural parent or the putative natural parent,

it may be unlawful for you to ship, transport, purchase, or possess a firearm or ammunition as a result of any conviction for a misdemeanor offense of violence pursuant to federal law under 18 USC 922(g)(9). I further understand that if I have any questions as to whether this law makes it illegal for me to ship, transport, purchase or possess a firearm or ammunition, I should consult an attorney.

I have been informed of these rights and understanding them, I do hereby knowingly and voluntarily waive them and enter the following plea to the above charge(s):

GUILTY **NO CONTEST**

[Signature]
Judge/Magistrate

[Signature]
Defendant

DATE 3-2-21
This is to certify that the above is a true and correct copy of Warrant filed in the Stow Municipal Court, Summit County, Ohio on 6-25-14
AMBER ZIBRITOSKY, CLERK OF COURTS
(SEAL) By [Signature]

Attorney for Defendant
Rev. 2-16-12
MAR - 9 2021

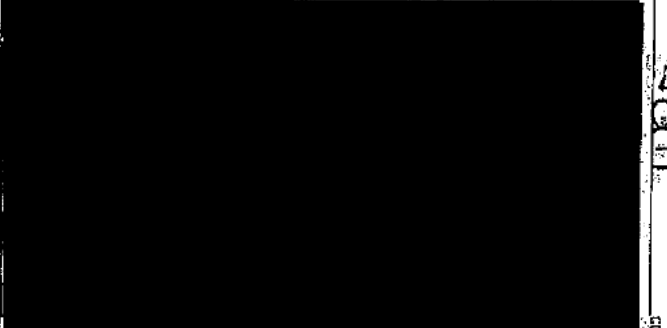
STOW MUNICIPAL COURT
 MACEDONIA MAYOR'S COURT
 SUMMIT COUNTY JUVENILE COURT
 STATE OF OHIO, CITY OF MACEDONIA

Stow Ct
 SUMMIT COUNTY, OH
 TICKET # 097930
 CASE # 14TRD05045

NAME Volodymyr V. Zhukovskyy
 STREET 90 New Bridge St
 CITY, STATE W. Springfield, MA ZIP 01089

OPERATOR LICENSE / STATE ID #	BIRTH DATE	ISSUE DATE	STATE
S85944504	12/21/95	04/25/13	MA
CLASS	EXPIRES	ENDORSEMENT(S) / RESTRICTION(S)	SEX / HT / WT / HAIR / EYES
D 2017			M / 507 / 133 / Bro / Brn / W
FINANCIAL RESPONSIBILITY PROOF			
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A			

DEFENDANT COMPLAINT ON 06/24 2014 AT 502 AM/PM YOU
 Operated/Passenger/Parked/Walked a Passenger Motorcycle Bicycle Other
 Commercial DOTA >26,000 lbs <16 Pass. Bus >16 Pass. Bus Haz. Mat.
 VEHICLE: YEAR 2007 MAKE Chevy MODEL Truck
 COLOR White LICENSE # F2Q 2385 STATE OH
 UPON A PUBLIC HIGHWAY, NAMELY I 271 NB
 (NEAR) Ledge Rd (M.P. 2)
 IN THE City Stow in Macedonia IN Summit COUNTY (NO.) 77 STATE OF OHIO AND COMMITTED THE FOLLOWING OFFENSE(S).



OTHER OFFENSE: False Info to a Police Officer ORC ORD TR JR
4513.361

<input type="checkbox"/> DRIVER LICENSE HELD	<input type="checkbox"/> VEHICLE SEIZED	<input type="checkbox"/> JUVENILE OFFENDER
PAVEMENT: <input type="checkbox"/> Dry <input checked="" type="checkbox"/> Wet <input type="checkbox"/> Snow <input type="checkbox"/> Ice # of Lanes <u>2</u> <input type="checkbox"/> Construction Zone	VISIBILITY: <input type="checkbox"/> Clear <input type="checkbox"/> Cloudy <input type="checkbox"/> Mist <input type="checkbox"/> Night <input type="checkbox"/> Dawn	
WEATHER: <input checked="" type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Fog <input type="checkbox"/> No Adverse		
TRAFFIC: <input type="checkbox"/> Heavy <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Light <input type="checkbox"/> None		
AREA: <input type="checkbox"/> Business <input type="checkbox"/> Rural <input type="checkbox"/> Residential <input type="checkbox"/> Industry <input type="checkbox"/> School <input checked="" type="checkbox"/> Interstate		
CRASH: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Almost Caused <input type="checkbox"/> Non-Injury <input type="checkbox"/> Injury <input type="checkbox"/> Fatal		
Crash Report Number: _____		
REMARKS: _____		
ACCOMPANYING CRIMINAL CHARGE: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No TOTAL # OFFENSES <u>3</u>		

TO DEFENDANT: SUMMONS PERSONAL APPEARANCE REQUIRED Yes No
 You are summoned and ordered to appear at the:
 MACEDONIA MAYOR'S COURT, 8881 VALLEY VIEW RD. MACEDONIA, OH 43066, (614) 468-8380
 STOW MUNICIPAL COURT, 4400 COURT HOUSE DR. STOW, OH 44224, (330) 564-9200
 SUMMIT COUNTY JUVENILE COURT, 600 DAN ST. AKRON, OH 44310, (330) 943-2900

If you fail to appear at this time and place you may be arrested or your license may be cancelled.
 This summons is served personally on the defendant on 6/25 2014
 The Issuing/charging law enforcement officer states under the penalties of perjury and falsification that he/she has read the above complaint and that it is true.

Offense Code	Points	Priority	Balance

Issuing Law Enforcement Officer: [Signature] (NAME AS ABOVE)
 Training Officer: Volodymyr Zhukovskyy, 1111 Court View, Stow, OH 44224, (330) 564-9200
 OHIP0060 10-0060-00 (REVISION 05/09) (EXPIRES 6/30/17) DATE 3/22 (66595)

DEFENDANT'S ATTORNEY Name, Address, Phone Number _____

DATE	COURT ACTION: ORDERS
	BAIL \$ _____
	MUNICIPAL COURT OF _____
Amount	Type Receipt No.
	2014 JUN 25 A 11:42
Refund Check #	Amount Deputy Clerk

VIOLATIONS BUREAU ACTION
 PLEA OF GUILTY, WAIVER OF TRIAL
 FINE _____ RECEIPT # _____
 COST _____ DEPUTY CLERK _____
 TOTAL _____
 WAIVER BY MAIL
 WAIVER BY PERSONAL APPEARANCE

CONTINUED TO _____ REASON _____ SENT CARD
 CONTINUED TO _____ REASON _____ SENT CARD
 CONTINUED TO _____ REASON _____ SENT CARD

CASE CALLED; DEFENDANT FAILED TO APPEAR
 FORFEIT BOND
 ISSUE BENCH WARRANT: BOND _____

SIGNATURE OF JUDGE _____

DEFENDANT ARRAIGNED: PLEA GS
 SET FOR TRIAL PRETRIAL HEARING

TRIAL BY COURT/JURY/FINDING/VERDICT
 THE COURT ENTERS THE FOLLOWING ORDER:
 FINED 100 AND COURT COSTS AND _____
 DAYS IN JAIL; SUSPEND _____ OF FINE AND _____
 OF COSTS AND _____ DAYS IN JAIL ON
 CONDITIONS: _____

DRIVING PRIVILEGES SUSPENDED FOR _____ DAYS.
 EXCEPT THAT _____

OTHER ORDERS: _____

RECOMMENDATION OF REFEREE CONFIRMED BY JUDGE _____



2014TRD05045 01 M1
 ZHUKOVSKYY, VOLODYMYR V
 MAC 4513.361 FALSE INFO. TO AVOID

MAR - 9 2021

This is to certify that the above is a true and correct copy of the Court Action filed in the Stow Municipal Court, Summit County, Ohio on 6/25/14
 AMBER ZIBRITOSKY, CLERK OF COURTS
 (SEAL) By [Signature] Deputy Clerk

SAME

SIGNATURE X

101

ORCS

PHONE 432-21334

6/25/14 Released, AN
 6/25/14 After - AN MHC

100

X

EXHIBIT B

Exhibit B

MACEDONIA POLICE Incident Number
 9691 VALLEY VIEW RD, MACEDONIA, OH 44056 Incident / Offense Report 14-00387

Method Received	Time Received	Time Dispatched	Time Arrived	Time Cleared:
R	06/24/2014 23:14:52	06/24/2014 23:14:52	06/24/2014 23:14:52	06/24/2014 00:29:21
Offense				
Report Date / Time	Incident Occurred From		Incident Occurred To	
Date Time	Date	Time	Date	Time
Wednesday 06/25/2014 02:19:00	Wednesday 06/25/2014	23:14:52	Tuesday 06/24/2014	00:29:21

Location of the Incident (Street #, Street, Apt. #, City, State, Zip) Zone
 N LINE I 271 NB MACEDONIA OHIO 44056 1

Persons Involved:	VOLODYMYR V ZHUKOVSKYY - ARA SOCIETY - VIC	Property:	SHORT BLUE STRAW WITH A WHITE POWDERY
		Amount:	
		Type:	

Units:	Officers:
1st: 0429	MICHAEL PLESZ
2nd: 0414	BRANDON HEISLER
3rd: 0415	SEAN HATHAWAY
4th:	
5th:	

Photos:

Codes:	Descriptions:	OFFENSES
3550C	DRUG PARAPHERNALIA POSSESS	2925.14C
5425E	FURNISHING FALSE INFORMATION TO OFFICER ISSUING TRAFFIC TICKET	4513.361
5476C	DRIVING WHILE UNDER SUSPENSION	4510.11
5418	SPEED (ASSURED CLEAR DISTANCE)	4511.21

Weapons Used: Trade Marks: Date Bias

Entry: Location Type:
 Highway/roadway/street

Refer to Arrest: Incident #: Tow#: Dispatcher: D25 Officer in Charge: 0415 Entry Id: D25

Video Used

Case Status: CLOSED Cleared Date: 06/25/2014 Cleared By: 0429

Narrative: 14-00387 Page: 1

On 06/24/14 at 23:14 hours I made a traffic stop on OH PC FZQ2285 for speeding I-271 north near the north line.

I followed the car I-271 north from SR 8. I watched the car make an unusual lane change from the left to the right lane and squeezed between 2 cars that were going slower than he was. The car soon after moved back into the left lane and passed the other cars. I followed the car and activated my same direction radar. The car was traveling at 75 MPH in a 60 MPH zone. The car slowed down and sped up several times while I followed it. After we passed the Ledge Road Bridge the car slowed down to 57 MPH. I activated my emergency lights. When I did the car started to pull over and then swerved hard right almost off of the shoulder and into the grass. The car overcorrected and almost drove back into the right lane of traffic. I approached the car and asked the driver for his license and proof of insurance. The driver handed me a Massachusetts operator's license (MA S26410296) with the name Maksim N.

VINCE YAKOPOVICH PTL MICHAEL PLESZ
 Reviewing Supervisor: Bureau Supervisor: Officer:

Reznichenko on it. The driver did not have proof of insurance for the car. I asked him whose car it was and where he was going. The driver stated that he worked for a transport company called Nationwide Transport Inc. and they were transporting the car from Columbus, OH to Massachusetts. The driver showed me a bill of lading for the shipment of the car. The driver stated that the registered owner of the plates was shipping the car to a friend. The driver said that he was following a car carrier truck. I asked why the car wasn't on the carrier and he said that they didn't load it because it was raining. I asked if the customer would be upset that they were driving the car and putting miles on it and the driver had no response. The driver said that they were going to load the car in Erie, PA. The driver's story did not make sense and he seemed very nervous. I asked the driver for consent to search the car and he said yes. During my search I located in plain view a short blue straw with a white powdery residue inside it next to the steering wheel. It was not sitting very securely in a crevice and when I tried to grab the straw it almost fell to the floor. I also located a piece to the driver's wallet between the driver's seat and the center console with a different name Volodymyr Zhukovskyy on a student ID. I asked the driver what his name was and he said that he knew that he was in trouble. The driver admitted that his name was Volodymyr V. Zhukovskyy and that he lied because he knew that his driver's license was suspended. I asked Volodymyr about the straw and he said that he didn't know anything about it. I told him that the straw was in plain sight. He said that he's only had the car for the last 2 hours. The straw was loosely sitting in the crevice and it would most likely have fallen out during the 2 hour drive. I contacted Twinsburg for a K9, Twinsburg arrived and Ptl. Fate of Twinsburg PD advised that his K9 alerted on the car. After a thorough search nothing else was located.

Volodymyr V. Zhukovskyy was arrested for Drug Paraphernalia M-4, Driving Under Suspension M-1, Furnishing False Information to a Police Officer M-1, and Speed M-M through Stow Municipal Court.

VINCE YAKOPOVICH
Reviewing Supervisor:

Bureau Supervisor:

PTL MICHAEL PLESZ
Officer:

MACEDONIA POLICE

Incident Number

Page # 3

Persons Involved with Incident

14-00387

Incident #: 1400387	Relation: ARA	Arrest #:	CAD #:	Date of Contact: 06/24/2014	Phone: 413-682-4334
First Name: VOLODYMYR	Middle: Y	Last Name: ZHUKOVSKYY	Title: MR.	DOB: 12/21/1995	SSN:
Street #: 90	Street Name: NEW BRIDGE STREET	Apt:	City: W SPRINGFIELD	St: MA	Zip: 01089
Cell Phone: 413-682-4334	Employee Phone:				
Hgt: 507	Wgt: 133	Hair: BRO	Eyes: BRO	Race: W	Sex: M
Physical Marks:					
Offenses:					
3550C DRUG PARAPHERNALIA POSSESS					
5425E FURNISHING FALSE INFORMATION TO OFFICER ISSUING TRAFFIC					
5476C DRIVING WHILE UNDER SUSPENSION					
Resident Class: Tourist	Suspected of using: Drugs / Narcotics /			Victim Type:	

Incident #: 1400387	Relation: VIC	Arrest #:	CAD #:	Date of Contact: 06/24/2014	Phone:
First Name:	Middle:	Last Name: SOCIETY	Title:	DOB:	SSN:
Street #:	Street Name:	Apt:	City:	St:	Zip:
Cell Phone:	Employee Phone:				
Hgt:	Wgt:	Hair:	Eyes:	Race:	Sex:
Physical Marks:					
Offenses:					
3550C DRUG PARAPHERNALIA POSSESS					
5425E FURNISHING FALSE INFORMATION TO OFFICER ISSUING TRAFFIC					
5476C DRIVING WHILE UNDER SUSPENSION					
Resident Class:	Suspected of using:			Victim Type:	
	/			Society/public	

Reviewing Supervisor:

Bureau Supervisor:

Officer:

000287

MACEDONIA POLICE

Incident Number

Page # 4

Property Involved with Incident

14-00387

Item #: 001	Item: SHORT BLUE STRAW WITH A WHITE POWDERY RESIDUE INSI	NCIC#	Property Tag # *20140132*
Make:	Model: Serial #:	Quantity: 1.00	Unit: Measure:
Value:	Owner Applied Number:	Type: Seized	UCR Property Code:
NCIC Entry:	NCIC Removed:	Call Number:	Insurance Co.

Notes:

on 2/21/19 this item was destroyed

Reviewing Supervisor:

Bureau Supervisor:

Officer:

MACEDONIA POLICE

Incident Number

Page # 5

Vehicles Involved with the Incident

14-00387

No:	Value:	Plate:	LIC St.:	LIC Yr.:	LIC Type:	VIN #:	
001		FZQ2285	OH		PC	2G1WB58K079386645	
Year:	Make:	Model:	Style:	Color:	Ownership Verification:	Tow No:	Date of Involvement:
2007	CHEV	IMP	4W	WHI /	Registration		06/21/2014
Recovery Condition:	Recover Date:	Recover Location:			NCIC#	Owner Applied #:	

Damaged Missing:

Front:	Rear:	Doors :	Deck :	NCIC Entry:
Interior:	Engine:	Trans :	Dash:	
Vin Plate:	LIC Plate:	Ignition:	Other:	NCIC Remove:
Misc:				

Reviewing Supervisor:

Bureau Supervisor:

Officer:

000289

EXHIBIT C

4513.361 Furnishing false information to officer issuing traffic ticket.

(A) No person shall knowingly present, display, or orally communicate a false name, social security number, or date of birth to a law enforcement officer who is in the process of issuing to the person a traffic ticket or complaint.

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.

Effective Date: 01-01-2004.