

COÖS, SS.

SUPERIOR COURT

State of New Hampshire

v.

Volodymyr Zhukovskyy

214-2019-CR-078

**MOTION IN LIMINE: EVIDENCE OF DRUG USE ON DAYS PRIOR TO OR AFTER
JUNE 21, 2019**

NOW COMES the accused, by and through counsel, Jay Duguay and Steve Mirkin, Esq., and respectfully moves the Court for an Order *in Limine* precluding the State from introducing evidence of, or making reference to, Mr. Zhukovskyy's alleged drug use on any day other than June 21, 2019.

In Support of this motion, Mr. Zhukovskyy States the following¹:

1. The State provided as part of discovery several different forms of evidence which include statements or documents related to Mr. Zhukovskyy's use of drugs on dates prior to and after the accident on June 21, 2019. Those include police reports from prior incidents, Mr. Zhukovskyy's statements as to his drug use, witness statements about Mr. Zhukovskyy's drug use, and evidence of drug use found during Mr. Zhukovskyy's arrest at his home.
2. One particular incident regarding an overdose in Agawam, MA on May 5, 2019 has previously been litigated and is accordingly excluded from this request.
3. First, the State failed to provide notice of its intent to offer this 404(b) evidence in accordance with NH Rule of Criminal Procedure 12(b)(1)(F).

¹ All factual allegation are from discovery provided by the state unless otherwise noted.

4. Second, there is no admissible basis consistent with Rule 404(b) for which the evidence could be admitted. The evidence is not relevant under Rule 401 for any permissible purpose. The evidence would have no tendency to make the existence of any fact that is of consequence to the determination of this case more or less probable.
5. Even assuming *arguendo* that there was some probative value associated with this evidence, it is significantly outweighed by the danger of unfair prejudice in that the jury would use the evidence for its tendency to indicate a propensity for drug use, impaired driving, bad character, or some other impermissible purpose.
6. The State, John McCormick, Esq., did not provide a position on this motion and indicated it would respond to the motion when filed.

WHEREFORE, the accused respectfully prays the Court to grant this Motion *in Limine*, and for such further relief as may be just.

Respectfully submitted,

 /s/Jay Duguay_____
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded this 22th day of October, 2021, to John G. McCormack, Esq., Coös County Attorney, and Scott Chase, Esq., Assistant Attorney General.

/s/Jay Duguay _____
Jay Duguay