

COÖS, SS.

SUPERIOR COURT

State of New Hampshire

v.

Volodymyr Zhukovskyy

214-2019-CR-078

MOTION FOR CONTINUANCE

NOW COMES the accused, by and through counsel, Jay Duguay and Steve Mirkin, Esq., and respectfully moves the Court to CONTINUE the trial herein, and states as follows:

1. Trial herein is scheduled to begin on November 16, 2021, one week from the date hereof.
2. The issues to be decided herein are highly technical in nature, and will require the efforts of expert witnesses in the field of accident reconstruction, among other areas.
3. The State has availed itself of the services of the New Hampshire State Police reconstruction team, and has also retained the services of a private consultant, Crash Lab, Inc., to assist in its preparation and presentation of this case.
4. The defense secured the services of Stephen Benanti, an established reconstruction specialist with more than thirty years' experience in the field, including more than a decade as superintendent of the Massachusetts State Police reconstruction unit. The defense contacted Mr. Benanti and retained his services in August 2019, after receiving positive reviews of his work from other well-respected defense attorneys.

Granted, to the extent that the trial is continued to March 2022.

Clerk's Notice of Decision
Document Sent to Parties
on 11/10/2021

/s/ Peter H. Bornstein
Honorable Peter H. Bornstein
November 10, 2021

5. During the course of trial preparation, the parties' respective experts have submitted reports, and addenda to such reports, and have sat for depositions by opposing counsel. The defense intended to call Mr. Benanti as its expert reconstruction witness at trial, to present his professional opinion as to matters relating to the causation and effects of the crash that is the subject of this case.
6. On September 30, 2021, the State took the deposition of Mr. Benanti herein. At said deposition, certain questions were posed to Mr. Benanti concerning his history with the Massachusetts State Police, unrelated to his services in this case.
7. Subsequently, on the evening of November 8, 2021, the State provided the defense with a large volume of confidential materials (subject to a protective order) relating to the above-referenced matters raised at the deposition, and other unrelated matters. Based upon an initial review of such materials, defense counsel no longer believe that they can present Mr. Benanti as a witness at trial, without substantially compromising the accused's Constitutional rights to present all proofs favorable to his defense.
8. Given the shortness of time, there is no reasonable possibility of the defense obtaining an expert who can get up to speed on the investigation¹, render professional opinions as to the issues, prepare and submit a report, and sit for a deposition in time for trial.
9. The nature of the case is such that counsel cannot proceed to trial and provide a Constitutionally effective level of representation without the services of an expert witness in reconstruction. See, State v. Whittaker, 158 NH 762 (2009).

¹ Discovery in the case already exceeds 16,000 pages, along with hundreds of photos and videos relevant to accident reconstruction.

10. The accused, having been advised of the foregoing by counsel, hereby waives his speedy trial rights to the extent required hereby.
11. The defense needs to obtain the services of an expert witness, have such witness review the extremely large volume of discovery, inspect the scene of the accident and the involved vehicles, analyze the various reports and addenda of other experts, prepare and submit a report of his/her own, and prepare and sit for a deposition. Counsel respectfully request a continuance of no less than five months, and note that the State first contacted Crash Lab to obtain their services herein in August 2019, and their first report was submitted in February 2020, some five months later. Crash Lab was then provided additional information in April and June 2020, and provided a supplemental report on August 31, 2020, a full year after they were first contacted.
12. Furthermore, Attorney Duguay will have a substantial period over January and February, totaling four weeks during that period, when he will be unavailable due to prior commitments. Attorney Mirkin has a prior commitment between April 29 and May 2, 2022.

WHEREFORE, the accused respectfully prays the Court to grant this Motion, to continue trial herein for at least five months, and for such further relief as may be just.

Respectfully submitted,

/s/ Steve Mirkin
Steve Mirkin
NH Bar Id #1771
NH Public Defender
485 Route 10
Orford, NH 03777
603 353-4440

Jay Duguay
NH Bar Id #20347
NH Public Defender
134 Main St., Third Floor
Littleton, NH 03561
603 444-1185

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded this 9th day of November, 2021, to John G. McCormack, Esq., Coös County Attorney, and Scott Chase, Esq., Assistant Attorney General.

/s/ Steve Mirkin
Steve Mirkin