

COÖS, SS.

SUPERIOR COURT

State of New Hampshire

v.

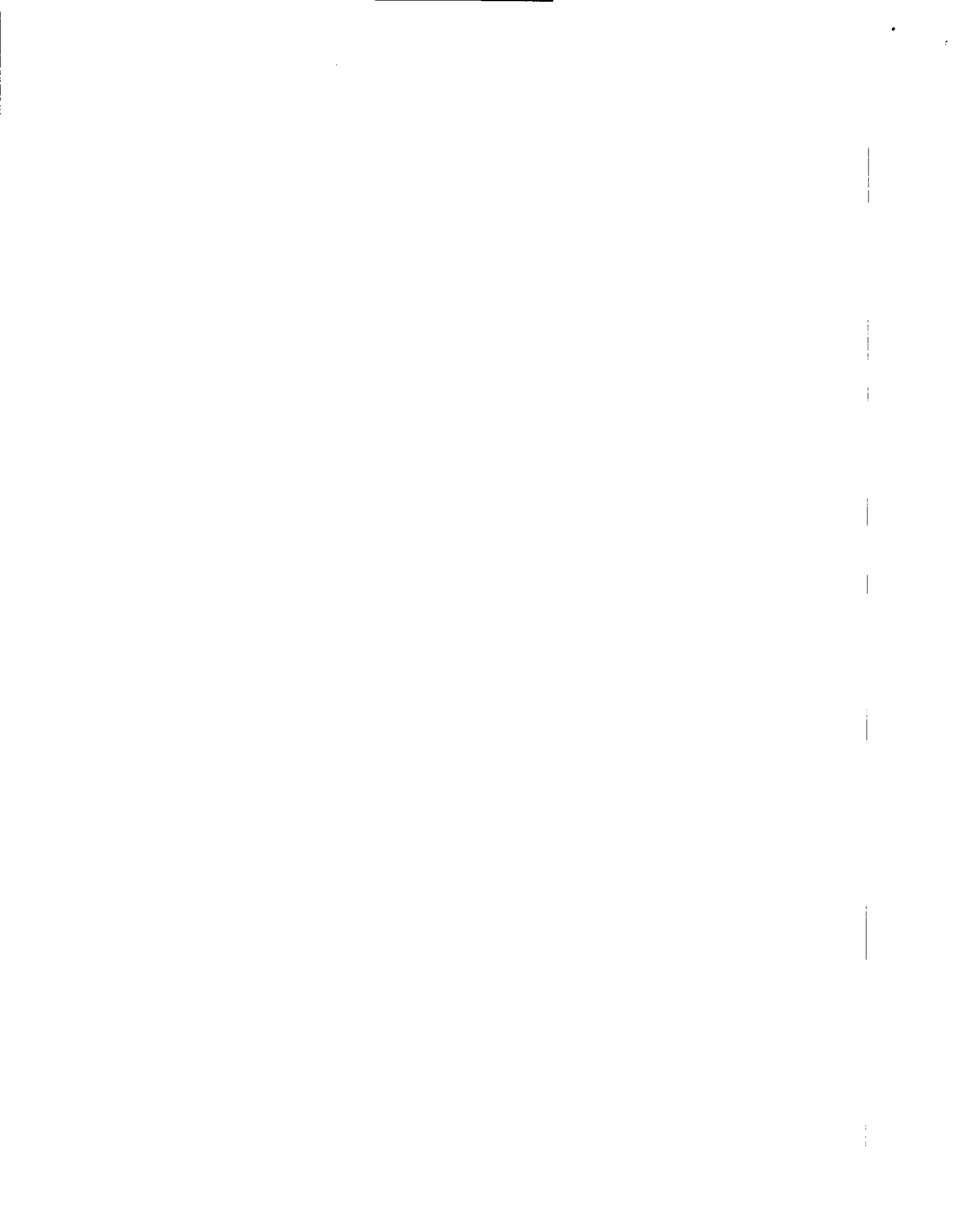
Volodomyr Zhukovskyy

19-CR-078

OBJECTION TO STATE’S MOTION #2 AND REQUEST FOR EVIDENTIARY HEARING

NOW COMES the accused, Volodomyr Zhukovskyy, by and through counsel, Jay Duguay, Esq., and Steve Mirkin, Esq., and respectfully OBJECTS to the State’s “Motion #2” regarding instances of alleged conduct while driving by the accused on the date of the alleged offense, and states as follows:

1. The State seeks leave to introduce evidence of three “instances” of alleged “erratic driving” by the accused on June 21, 2019, the date of the fatal accident from which the instant charges arise.
2. The first listed of such instances is attributed to Ms. Sally Hull, approximately two hours prior to the fatal crash; the second, to three Littleton firefighters at the same time or shortly thereafter; and the third to two employees of Berlin City Auto, within about a half hour before the fatal accident.
3. The State asserts that such evidence is “intrinsic” to, or “inextricably intertwined” with, the charged acts. The State also asserts that such evidence is relevant for an acceptable purpose other than propensity, under NHRE 404(b).
4. What the State’s Motion does not establish, however, is a factual basis for the assertion that the incidences of prior “erratic driving” were, as to the first two



instances, actually committed by the accused, and as to the third instance, relevant to the alleged offense on the grounds asserted by the State.

5. In order for the Court to rule appropriately on the State's Motion in advance of trial, it will be necessary to conduct an evidentiary hearing at which the State can present, and the defense can challenge, the efficacy of the State's proffered evidence under applicable legal standards.

WHEREFORE, the accused respectfully prays the Court:

- A) To DENY the State's Motion #2;
- B) Alternatively, to schedule an evidentiary hearing as to the factual basis for such motion; and
- C) For such further relief as may be just.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded this 15th day of, 2020, to John G. McCormack, Esq., Coos County Attorney; Shane Goudas, Esq., Assistant Attorney General; and Benjamin W. Maki, Esq., Traffic Safety Resource Prosecutor.



Steve Mirkin, Esq.

