

THE STATE OF NEW HAMPSHIRE

COOS, SS.

COOS COUNTY SUPERIOR COURT

STATE OF NEW HAMPSHIRE

V.

VOLODYMYR ZHUKOVSKYY

214-19-CR-78

Motion for Evidentiary Bail Hearing

NOW COMES the defendant, Volodymyr Zhukovskyy, by and through counsel, Jay Duguay and Steve Mirkin, Public Defenders, and respectfully requests this Honorable Court schedule this matter for an evidentiary bail hearing on the issue of the continuing need for preventative detention.

In Support of this motion Mr. Zhukovskyy states the following:

1. Mr. Zhukovskyy is charged with several offenses related to a motor vehicle accident that occurred on June 21, 2019 and is currently being held in preventative detention at the Coos County House of Corrections.
2. At arraignment on June 25, 2019, Mr. Zhukovskyy waived arraignment and argument on the State's request for preventative detention. Mr. Zhukovskyy later waived arraignment on additional indictments on October 29, 2019.
3. Since that time the State has provided discovery that has substantially altered the original information available at the time of the bail hearing.
4. Specifically, State Police C.A.R. team initially determined that initial point of impact occurred between Mr. Zhukovskyy's trailer and Albert Mazza's motorcycle. They further concluded that the trailer was 1.5 ft over the center line into eastbound lane of travel at the time of impact. The report indicated that there was no evidence that the motorcycles were on the wrong side of the road at the time of the impact. The report noted that the first visible tire mark associated with the truck occurred at a position where the truck was protruding 4 feet into the eastbound lane of travel.
5. The State recently disclosed a report from the Crash Labs, an independent accident reconstruction firm, which shows that the State Police CAR Team's initial assessment was deeply flawed and that all the above information was incorrect.
6. The new report found that the point of impact did not occur in the eastbound lane of

travel. The report concludes that the initial impact occurred between the left side of Mr. Mazza's motorcycle and the left front tire of Mr. Zhukovskyy's truck. Critically, they determined that the impact occurred directly over the center line and that Mr. Mazza's motorcycle was in fact protruding over onto the center line when it struck the truck.

7. The report goes on to say that the impact caused catastrophic air loss to the left front tire of the truck which left a tire mark on the center line of the road. This tire mark had initially been attributed to an "unsuccessful avoidance maneuver" by Mr. Mazza, a position that the State has since retracted.
8. The State also provided information in discovery showing that Mr. Mazza had been turned around looking back at the group of riders behind him just prior to the accident.
9. Finally, autopsy reports show that at the time of the crash, Mr. Mazza's blood alcohol concentration was .135, well in excess of the statutory per se limit of impairment of .08.
10. Given the dramatically different factual circumstances as they are known at this time, Mr. Zhukovskyy respectfully requests an evidentiary hearing on the continuing need for preventative detention.
11. Mr. Zhukovskyy would not present a danger to himself or other and concerns about appearance for trial could be addressed through appropriate measures including living with his parents where he returned and remained after the accident, surrendering his passport, and not operating a motor vehicle while on bail.
12. Mr. Zhukovskyy requests an evidentiary hearing at which further exploration of the above and other relevant issues can be presented for the benefit of the Court.

Wherefore, The Defendant, Volodymyr Zhukovskyy, respectfully requests this Honorable Court schedule an evidentiary hearing on the continuing need for preventative detention and his release on conditions of bail.

For the reasons set forth in paragraphs 1-10 of the State's Objection, the Court denies the defendant's motion.

/s/ Peter H. Bornstein
Honorable Peter H. Bornstein
April 7, 2020

Clerk's Notice of Decision
Document Sent to Parties
on 04/07/2020

Respectfully submitted,

_____/s/ Jay Duguay_____
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CERTIFICATE OF SERVICE:

I hereby certify that a copy of this Motion for Evidentiary Bail Hearing has been forwarded to the Coos County Attorney John McCormick on this 27th day of March, 2020.

 /s/ Jay Duguay _____
Jay Duguay, Esq.