

STATE OF NEW HAMPSHIRE

COÖS, SS.

JULY 2022

State of New Hampshire

v.

Volodymyr Zhukovskyy

214-2019-CR-78

**STATE’S MOTION IN LIMINE: PRECLUSION OF DEFENDANT’S PROPOSED
EXHIBIT A (PHOTOGRAPH OF OATH)**

NOW COMES the State of New Hampshire, by and through the Offices of the Coös County Attorney and the Attorney General, and submits this motion seeking to preclude defendant’s proposed trial Exhibit A. In support of this motion, the State submits the following:

1. The defendant currently stands charged with seven counts of manslaughter, seven counts of impaired negligent homicide, seven counts of negligent homicide, one charge of aggravated driving while intoxicated, and one charge of reckless conduct with a deadly weapon. Jury selection is scheduled to begin on July 18, 2022, with trial scheduled to begin on July 26, 2022.

2. Following the final pretrial hearing on July 13, 2022, the parties worked to pre-mark and discuss any potential exhibits the parties intended on entering at trial. For the first time, defense counsel supplied the State the with three exhibits the defendant intended on entering at trial. One of those exhibits, Defendant’s proposed Exhibit A, was an image taken of post-crash debris, which captured a document titled “Oath of membership” for the Jarheads motorcycle club. *See* State’s Ex. A (attached). The signature of the member who purportedly took the oath is

illegible and the oath is dated May 4, 2019, over a month before the crash.¹ The State objects to this evidence being admitted at trial.

3. At the outset, the photograph—and the oath and the writing therein—is inadmissible hearsay. The oath is an out of court statement and defense has not proffered any purpose its being offered other than for its truth, *i.e.*, that this is the oath that victims of the crash actually took, when, in fact it is only evidence that an individual whose name is illegible, apparently signed this form on May 4, 2019. Such an out-of-court statement offered for its truth is inadmissible. *N.H. R. Evid.* 801.

4. The proposed evidence is also irrelevant. The fact that an unknown person over a month before the crash signed this paperwork captioned “oath of membership” has no “tendency to make a fact more or less probable than it would be without the evidence.” *N.H. R. Evid.* 401. There is no identification associated with the new member who purportedly signed this form. Even were the signatory able to be identified, there is no relevance between the oath itself and the cause or manner of the crash. Therefore, such irrelevant evidence should be inadmissible. *See N.H. R. Evid.* 402.

5. Furthermore, even if there were some relevance, it would be substantially outweighed by the danger of unfair prejudice and confusing the issues. *See N.H. R. Evid.* 403. The oath, *inter alia*, reads: “I _____ in the presence of the Almighty God and the members of the Jarheads Motorcycle Club . . . do solemnly swear that I will uphold and defend the laws of the United States of America and the by-laws of the Jarheads Motorcycle Club I also swear to govern my conduct as a United States Marine and Jarhead Motorcycle Club member in a lifestyle of unquestionable honesty and integrity, so help me God.” Introduction of

¹ There are two signatures, the first titled “new member” and the second titled “designee.” The new member’s signature is eligible. The designee signature itself is eligible, but reads “Rib” at the end. Based on the

this oath is likely to lead to the obvious inference, or direct implication by the defendant, that Albert Mazza, the lead motorcyclists, who had a blood alcohol level in excess of the legal limit, did not comply with his oath. Accordingly, the evidence should be precluded pursuant to New Hampshire Rules of Evidence 403.

6. Based upon the foregoing, the defendant's proposed trial Exhibit A, should be precluded.

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

- (A) Grant the State's motion to preclude Defendant's proposed Exhibit A; and
- (B) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

July 14, 2022

/s/ John G. McCormick

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signature and "Rib," this signature may belong to Manuel Ribeiro, one of the motorcyclists in the formation.

/s/ Joshua L. Speicher

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CERTIFICATE OF SERVICE

I certify that this pleading has been provided to counsel of record, through the Superior Court's electronic filing system.

/S/ Scott D. Chase

Scott D. Chase, Esq.

State's Exhibit A (Oath)

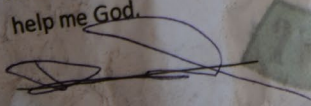


Designee/Official

Oath of membership

I, _____
in the presence of Almighty God and the members of the
Jarheads Motorcycle Club assembled here, do solemnly swear that I will uphold
and defend the laws of the United States of America and the by-laws of the
Jarheads Motorcycle Club. In doing so, I swear the following: To never discredit
the Jarheads Motorcycle Club or knowingly deceive, defraud, injure or wrong any
member or family member of my organization. Furthermore, I swear never to
propose someone for membership that I know who is unqualified or unworthy to
be a member of JMC.

I also swear to govern my conduct as a United States Marine and Jarhead
Motorcycle Club member in a lifestyle of unquestionable honesty and integrity,
help me God.


New Member

5/4/2019
Date


Designee/ Official

Jarheads MC South Shore Chapter
Treasurer report for April 30, 2019