

****REDACTED – PUBLIC VERSION****

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 B (PHOTOGRAPH OF EMAIL) OR REFERENCES TO KEGS OF BEER

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 B. 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 B, was an image taken of post-crash debris, which captured what appears to be an email regarding the Jarhead’s 2019 Annual Meeting. *See* State’s Ex. A (attached). Other than the statements within the email, there is no

other context or evidence in the record about the statements contained therein. The State objects to this evidence being admitted at trial.

1. First, this evidence is irrelevant. The State assumes the defendant intends to point out that the email contains references to “kegs of beer” being purchased for the weekend. As this Court has previously held, evidence of alcohol consumption by members of the Jarheads Motorcycle Club or their significant others not relevant to causation; witness bias or truthfulness; or, in the first instance, “to show that the police investigation was inadequate and biased in favor of the Jarheads” or “to counter the narrative put forth by various of the Jarheads members of their overriding concern for safety.” *See* Court Order, November 3, 2021. This Court has limited evidence of alcohol consumption to only those witnesses who testify, and is limited in scope to the assessment of the witnesses’ capacity to observed and accurately describe the incident. *Id.* The contents of the email captured in the defendant’s proposed Exhibit B is not relevant for that limited purpose. The email was sent a week before the crash and does not provide any evidence about what any individual testifying witness consumed prior to the crash. Accordingly, the contents of the email are irrelevant, and therefore inadmissible. *See N.H. R. Evid.* 402.¹

2. Furthermore, even if there were some relevance, it would be substantially outweighed by the danger of unfair prejudice and misleading the jury. *See N.H. R. Evid.* 403. As previously discussed, the relevance of alcohol consumption is limited in scope, and is only admissible with regard to testifying witnesses. Based upon the photograph itself, there are only two clearly identified parties in the email chain that are listed on the State’s witness list, “Josh Morin DEMON” and “Dave Hard Charger Bark,” and one email address that appears to be someone on the State’s witness list, Manuel Ribeiro, “M Rib.” Michael Ferazzi, the victim who died under

the defendant's trailer, is also one of the recipients. The State assumes the defendant will use the statement about the beer kegs to suggest that these witnesses were either drinking or drunk. Such an assertion, however, will implicitly indict the other motorcyclists—including the deceased motorcyclists, who are outside the scope of the admissibility of alcohol consumption testimony—with the same speculative conduct, which this Court has already excluded. Beyond improperly violating the Court's previous ruling, any probative value is substantially outweighed by the danger of misleading the jury into thinking that any of the deceased motorcyclists, beyond Albert Mazza, were impaired. As the defendant is well-aware, any such assertion is belied by the record, as every other blood alcohol test taken in this case showed the motorcyclists were all below the legal limit, if there was any alcohol at all.

3. The Court has given the defendant an opportunity to present evidence of the testifying witnesses' alcohol consumption for a limited purpose. The attenuated nature between the email a week before the crash stating that there would be kegs of beer and what the individual testifying motorcyclists actually drank on the day of the crash, if any, is markedly outweighed by the risk of misleading the jury and the unfair prejudice because of the likely inference that all of the motorcyclists were drinking from the keg discussed in this email, even the deceased motorcyclists. Accordingly, the evidence should be precluded pursuant to New Hampshire Rules of Evidence 403.

4. Finally, the photograph, *i.e.* the email and any writing therein, is also inadmissible hearsay. The email contains multiple out-of-court statements that are clearly intended to be introduced for the truth of the matter asserted therein. Such an out-of-court statement that is offered for its truth is inadmissible. *N.H. R. Evid.* 801.

¹ The State further notes that the defendant has to further produce evidence sufficient to support a finding that the item is what it purports to be. *See N.H. R. Evid.* 901. In this instance, such authentication should be done

5. Based upon the foregoing, the defendant's proposed trial Exhibit B, 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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outside the presence of the jury.

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 (EMAIL)

