

STATE OF NEW HAMPSHIRE

Coös, SS.

Superior Court

State of New Hampshire

v.

Volodymyr Zhukovskyy

Superior Court Case: 214-2019-CR-78

Charge ID: 1636626C, 1636627C, 1636628C, 1636629C, 1636630C, 1636631C,
1636632C, 1680454C, 1680455C, 1680456C, 1680457C, 1680458C, 1680459C,
1680460C, 16804864C, 1680485C, 1680486C, 1680487C, 1680488C, 1680489C,
1680490C, 1680491C, 1680492C

**STATE'S MOTION TO CONDUCT FURTHER STATE EXAMINATION AND TESTING
OF DODGE RAM 2500 PICKUP TRUCK**

NOW COMES the State of New Hampshire, by and through the Office of the Coös County Attorney, John G. McCormick, Coos County Attorney and states as follows:

FACTS

1. Defendant currently stands indicted on seven counts of negligent homicide (class B felonies), seven counts of negligent homicide-DUI (class A felonies), seven counts of manslaughter, one count of aggravated driving while intoxicated (class B felony), and one count of reckless conduct (class B felony), following the Coos Grand Jury's return of those indictments issued at its October 18, 2019, sitting.
2. The charges stem from a collision that resulted in the deaths of seven motorcyclists in Randolph, NH. At the time of the collision on June 21, 2019, defendant was operating a 2016 Dodge Ram 2500 pickup truck with an attached trailer that collided with multiple motorcyclists, resulting in the deaths of seven individuals.
3. On June 25, 2019, Trooper Brandon Girardi of the New Hampshire State Police drafted a search warrant for the 2016 Dodge Ram 2500 pickup truck and attached trailer that was signed by the Honorable Janet H. Subers, Justice of the 1st Circuit Court – Berlin Division. The truck was seized and searched by the New Hampshire State Police on June 26, 2019.
4. The State of New Hampshire is currently in possession of the Dodge Ram 2500 pickup truck and trailer. The truck and trailer are being stored at a lot on the

property of John's Wrecker Service in Pembroke, NH, where the defense team examined the pickup truck and trailer in December 2019.

RELIEF REQUESTED

5. The State, through its outside consultants from Crash Lab, Inc., seeks to conduct a further examination of the Dodge Ram 2500 pickup truck within its custody, and may conduct testing or take additional measurements of the truck as it deems appropriate. The State requests that Crash Labs, Inc., be permitted to conduct an individual examination of the evidence without members of the defense being present.
6. Crash Lab, Inc., will document the condition of the vehicle prior to and after performing measurements and tests, either through a videotaped log and/or by providing a written description.
7. Following completion of the further measurements and/or testing, the State will return the vehicle to its previous post-crash state -- *status quo ante*. The State, through Crash Labs, Inc., will document the measurements and testing that it completes during this further examination.

DEFENSE POSITION

8. Defendant objects to the State's proposed further examination and testing to be performed by the State's consultant, Crash Lab, Inc., unless he, or a representative expert from the defense team, is permitted to be present during the proposed examination and testing of the evidence.

LEGAL ANALYSIS

9. The Due Process Clause of both the state and federal constitutions "imposes a duty on the State to preserve evidence at least in those circumstances where its exculpatory value is apparent and comparable evidence is unavailable." *Opinion of the Justices (Breath Test Samples)*, 160 N.H. 180, 183 (2010) (citing *California v. Trombetta*, 467 U.S. 479, 489 (1984)). The State through its outside consultants will exercise due care to ensure that the evidence is preserved.
10. The Crash Lab, Inc., acting on behalf of the State in conducting a further examination of the evidence in this case, the 2016 Dodge Ram 2500 pickup truck and attached trailer involved in the fatal collision, is analogous to an officer's examination of evidence pursuant to a warrant: "An officer executing a search warrant may take with him suitable assistants and suffer no others to be with him." *RSA 595-A:8*. Accordingly, the defense team's insistence on being present during the Crash Labs, Inc., examination and testing is without merit.

11. The State anticipates that no evidence will be destroyed or otherwise compromised as a result of the further examination or testing, and asserts that it will act in good faith to preserve and protect the vehicle and trailer. The defendant must show that the State acted in “bad faith” in its destruction of the evidence in order to establish a due process violation. *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988).
12. The State is generally under no obligation to seek prior authorization for testing or examination of evidence lawfully within its possession, or seized during a search incident to a lawful arrest. *State v. Wheeler*, 128 N.H. 767, 772 (1986). Because “the police had lawful possession of the property, Article 19, neither requires further demonstration of probable cause nor the issuance of further legal process to authorize the examination or testing of such property.” *Id.*
13. Nevertheless, the State seeks Court authorization before performing an additional examination and testing of the evidence due to the Court’s prior order to preserve evidence, and demonstrates further that the State is acting in good faith regarding its intent to perform a further examination and testing of the Dodge Ram 2500 pickup truck and attached trailer.
14. Counsel for the defendant, Attorney Jay Duguay, Esq., was contacted and he objects to the State's Motion, unless he, or a representative expert from the defense team, is permitted to be present during the examination and testing of the evidence.

WHEREFORE, the State requests that this Honorable Court:

- A. GRANT the State's Motion; or
- B. HOLD a hearing on the matter; or
- C. Grant any other relief deemed proper and just.

Respectfully submitted,
THE STATE OF NEW HAMPSHIRE

By its attorneys,

January 17, 2020

/s/ John G. McCormick

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CERTIFICATION

I certify that this pleading has been provided to Jay Q. Duguay, Esq., and Steve Mirkin, Esq., New Hampshire Public Defender's Office, 134 Main Street, Littleton, NH 03561, through the Superior Court's electronic filing system.

January 17, 2020

/s/ John G. McCormick

John G. McCormick, Esq.