

STATE OF NEW HAMPSHIRE

Coos, 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 OBJECTION TO DEFENDANT'S MOTION TO RECONSIDER ORDER DENYING MOTION *IN LIMINE* TO EXCLUDE PORTIONS OF INTERVIEW, PART ONE AND ADDENDUM, AND REQUEST FOR ARGUMENT

NOW COMES the State of New Hampshire, by and through the Office of the Coös County Attorney and the Attorney General, and objects to defendant's Motion to Reconsider Order Denying Motion *In Limine* To Exclude Portions of Interview, Part One And Addendum, and Request For Argument. In support of its objection, the State submits the following:

1. The defendant filed his Motion *In Limine* to Exclude Portions of Interview, Part One and Addendum, on April 18, 2022; the State filed an objection on May 5, 2022. In an order issued on May 9, 2022, the Court granted defendant's motion "as to those portions of the interview identified in paragraphs six through ten," but otherwise denied the defendant's motion as it relates to portions of defendant's statements in the interview transcript to which the State objected.
2. On May 13, 2022, the defendant filed a motion to reconsider the Court's May 9 order, arguing that the evidence the State seeks to introduced is not relevant to the crimes alleged

(Defendant's Mot. to Reconsider ¶14); the State seeks to introduce the evidence to inflame the passions of the jury (Id. at ¶19); and, the Court "misapprehended its obligation to conduct ... an analysis" (Id. at ¶19) under State v. Cassavaugh, 161 N.H. 90, 98 (2010).

3. The State objects, and asserts that the Court did not misapprehend any fact or law in rendering its ruling, but rather the Court did analyze the facts and law in reaching its decision.
4. The evidence in the form of defendant's statements about his post-collision drug use and the interplay between those statements and his demeanor as shown in his videotaped interview on June 24, 2019, conducted by Detectives Torsey and McLaughlin, is the best and only videotape of the defendant showing the effects that the drugs found in his system two hours after the fatal collision have on the defendant. The evidence is central to the State's charges directly alleging impairment as an element of the offense that the State has the burden to prove beyond a reasonable doubt at trial. The evidence is relevant, and is not substantially outweighed by a danger of unfair prejudice or being offered for propensity purposes. See State's Objection at ¶¶ 10-23 and ¶26.
5. For the same reasons articulated in its objection, the State objects to excluding defendant's statements identified in the defendant's motion. In paragraphs 10-23 of the State's objection, the State articulated why the evidence sought to be introduced at trial is relevant. The Court, in weighing the State's stated reasons for why the evidence is relevant against the defendant's argument to the contrary, applied the principles of law in N.H. Rule of Evid. 401, to determine that the evidence sought to be introduced by the State is relevant.

The Court's relevancy determination based on its analysis of the facts and the applicable rule does not support the defendant's call for reconsideration.

6. The Court further found that the evidence the State seeks to introduce at trial to be legitimate, offered for non-propensity purposes as articulated in paragraph 26 of the State's objection, and that the probative value is not outweighed by the danger of unfair prejudice. See N.H. Rule of Evid. 403. The Court made its determination that the probative value of the evidence is not substantially outweighed by a danger of unfair prejudice after examination of the principles of law established in N.H. Rule of Evid. 403, and State v. Cassavaugh, 161 N.H. 90, 98 (2010) (quoting State v. Yates, 152 N.H. 245, 249-50 (250)).
7. The Court did not misapprehend any fact or law in reaching its decision. Because the evidence is both relevant and is not unfairly prejudicial, the Court's ruling is fundamentally sound and, far from being an unsustainable exercise of discretion, is supported by the specific facts of the case and the law. See State v. Yates, 152 N.H. 245, 249 (2005).
8. Accordingly, the defendant's motion should be denied.

WHEREFORE, the State requests that this Honorable Court:

- A. DENY the Defendant's Motion without a hearing; or
- B. HOLD a hearing on the matter; or
- C. GRANT any other relief deemed proper and just.

May 23, 2022

Respectfully Submitted,
STATE OF NEW HAMPSHIRE

/S/ John G. McCormick

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has this day been forwarded to Jay Q. Duguay, and Steve Mirkin, at the New Hampshire Public Defender, counsel for the defendant, via the Superior Court's electronic filing system.

May 23, 2022

Respectfully Submitted,
STATE OF NEW HAMPSHIRE

/S/ John G. McCormick

John G. McCormick, Esq
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