

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

COÖS, SS.

APRIL TERM, 2020

THE STATE OF NEW HAMPSHIRE

V.

VOLODYMYR ZHUKOVSKYY

217-2019-CR-78

**STATE'S OBJECTION TO DEFENDANT'S MOTION FOR EVIDENTIARY BAIL
HEARING**

NOW COMES, the State of New Hampshire, by and through its attorneys, the Office of the Coös County Attorney and the Office of the Attorney General, who respectfully requests that this Honorable Court deny the defendant's motion for an evidentiary bail hearing. In support of its request, the State says as follows:

1. On June 21, 2019 the defendant was involved in a motor vehicle crash resulting in the deaths of seven people, serious bodily injury to another person, and placing additional oncoming drivers in danger. The defendant was arrested and charged with seven counts of negligent homicide on June 24, 2019. He waived arraignment on the charges on June 25, 2019, and entered a plea of not guilty. The defendant was indicted on October 18, 2019, on seven charges of manslaughter, seven charges of impaired negligent homicide, seven charges of negligent homicide, one charge of aggravated driving while intoxicated, and one charge of reckless conduct with a deadly weapon. The defendant waived arraignment on these additional charges and waived argument as to the State's request for preventative

detention. The defendant is being held without bail pending trial. The defendant now moves for an evidentiary bail hearing alleging discovery provided by the State has substantially altered the original information available at the time he was arraigned. However, no information released in discovery has any legal impact on the considerations for requiring the defendant to be held in preventative detention. Nothing about the discovery provided by the State, that forms the basis of the defendant's motion, changes the fact that the defendant was impaired on June 21, 2019; that one month prior to the crash he was released on bail for another charge of driving while under the influence of suspected drugs; and that the defendant's criminal history proves that he is a danger, and preventative detention is the only way the court can ensure the safety of the public, and the defendant.

2. Preventative detention is governed by RSA 597:2 which states in pertinent parts:

If a person is charged with any criminal offense...the court may order preventive detention without bail, or, in the alternative, may order restrictive conditions including but not limited to electronic monitoring and supervision, only if the court determines by clear and convincing evidence that release will endanger the safety of that person or the public. The court may consider all relevant factors bearing on whether the release will endanger the safety of that person or the public.

RSA 597:2. Release of the defendant will endanger the safety of the public and the defendant.

3. The defendant has a history of drug use and driving while impaired. On June 21, 2019, he was using illegal street drugs while driving a large commercially operated vehicle, with an attached trailer, in Randolph, New Hampshire.¹ The defendant was involved in a collision that left numerous motorcyclists dead and injured. After the crash, the

¹ The combined weight of the truck and trailer was over 10,000 pounds.

defendant consented to have a sample of his blood drawn for chemical testing. The test revealed that the defendant's blood contained 6.7 nanograms per milliliter (ng/ml) of fentanyl, 21 ng/ml of morphine² and over 1000 ng/ml of benzoylecgonine (a metabolite of cocaine). The defendant told police that the morning of the fatal crash he had consumed two "superman" branded baggies of heroin and a half of a gram of cocaine. The defendant told police that he combines the heroin and cocaine when he uses them. The defendant also admitted to the authorities that he could still feel the effects of the cocaine at the time he left a car dealership in Gorham, New Hampshire about a half-hour before the crash occurred, and further stated he could feel the effects of the cocaine at the time the fatal crash occurred. During the half-hour before the crash, multiple witnesses observed the defendant driving in a manner consistent with impairment. The witnesses observed the defendant weave his truck and trailer within his lane, and cross the double-yellow line on several occasions. Moreover, the defendant admitted in a later interview with police that at the time of the collision he diverted his attention from the road and oncoming traffic, and was attempting to retrieve an object from the center console of his truck, when he drove left of the double-yellow line, and into the oncoming motorcyclists.

4. The defendant's drug use was not an isolated event. He admitted that he would take drugs **each day** before beginning his work as a commercial truck driver, sometimes stopping by his home during the day to consume **more drugs** before driving again. Additionally, the defendant admitted that after the fatal crash on June 21, 2019, and prior to his arrest on June 24, 2019, he returned to his home in West Springfield, where he continued

² The defendant's blood also tested positive for 6-monoacetylmorphine (6-MAM) which is the 6-monoacetylated form of morphine, which is pharmacologically active. When present, it is generally indicative of recent heroin use.

to consume what he understood to be heroin. Although the defendant initially told police that he uses about three to four bags of heroin per day, on June 25, 2019, while being held at the Coös County House of Corrections, the defendant requested medical attention because he was detoxing. When asked what he was detoxing from, the defendant responded “dope and alcohol,” stating that he is an “alcoholic.” When asked what quantities of these substances the defendant consumes on a daily basis, he responded that he drinks a bottle of “Hennessy” brand liquor every day, and consumes ten approximately “quarter-sized” bags of heroin each day. Based on this information alone, there is sufficient proof to order the defendant held without bail, but there is more.

5. The defendant’s admissions regarding drug use on June 21 are egregious, not just because of the results that followed, but also because the defendant was on bail. At the time of the fatal crash on June 21, 2019, the defendant had been previously released on bail of a \$2,500 non-surety bond for another criminal charge of driving under the influence of drugs, originating in East Windsor, Connecticut on May 11, 2019. In that case, police officers were dispatched to a Walmart parking lot for a man who was acting erratically and had been observed revving the engine of his vehicle in the parking lot. When officers arrived, they identified the defendant as the person of interest. The defendant was twitching, making random, spontaneous movements with his arms and legs, appeared to have sores around his mouth, and was speaking in a hyperactive manner, among other observations. The defendant’s pants were wet in the area of his crotch, and his pants were observed to be unzipped. The defendant agreed to perform a number of field sobriety tests, which he failed. The defendant was arrested for driving while under the influence, and submitted to a breathalyzer test at the police station, which came back with a reading of 0.000 blood alcohol

concentration. The defendant was then offered the opportunity to take a blood test, which he refused.

6. Additionally, on January 10, 2014, the defendant pleaded to sufficient facts to support a conviction of operating under the influence of liquor in West Springfield, Massachusetts. In that case the defendant was observed driving straight through a stop sign and striking a parked vehicle, which had been parked on the opposite side of the road from the defendant's lane of travel. The defendant then continued to drive away, and was observed by a witness to have thrown an object from his vehicle into some bushes, the object was later recovered by police and discovered to be a 375 ml. bottle of Hennessy Cognac, that was about a quarter-full of liquid. The defendant failed a number of field sobriety tests, and submitted to a breathalyzer test, which yielded results of 0.148 and 0.146 blood alcohol concentration, almost double the legal limit to drive.

7. The defendant's criminal record further demonstrates his pattern of illicit drug and alcohol use. On March 21, 2018, the defendant pleaded guilty of possession of heroin, and cocaine. On February 11, 2019, the defendant was arrested by the Baytown, Texas Police for possession of drug paraphernalia.

8. Based on the facts surrounding the crash on June 21, the fact that the defendant was on bail, the defendant's drug use, and his prior criminal history, it is clear that only preventative detention will be sufficient to protect the public and the defendant. Nothing the defendant cites in this motion is to the contrary.

9. In his motion, the defendant cites a report that was provided by the State. However, nothing in that report changes the facts cited by the State that justify preventative detention. The information provided by the Crash Lab's findings still demonstrate that the

defendant was not operating fully within his appropriate lane of travel at the time he collided with the first motorcycle, before his truck and trailer traveled into the oncoming lane of travel, striking, killing, and maiming additional motorcyclists.

10. That result must be considered in light of the defendant's admitted drug use that day, his history of prior drug use, his bail status at the time, and his criminal history. Together, those facts prove that the defendant should continue to be held pursuant to RSA 597:2.

11. Although the defendant's dangerousness to himself and the community justify his preventative detention, he also poses a significant flight risk due to his immigration status and ties to a foreign nation. RSA 597:2 provides:

The court shall order the pre-arraignment or pretrial release of the person on his or her personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, or cash or corporate surety bail, subject to the condition that the person not commit a crime during the period of his or her release, and subject to such further condition or combination of conditions that the court may require unless the court determines by a preponderance of the evidence that such release will not reasonably assure the appearance of the person as required.

On information and belief, the defendant is a Ukraine national and has a status as a long-term permanent residence in the United States. An active detainer for deportation has been filed by the United States Immigration and Customs Enforcement agency, as a result of the defendant's alleged criminal conduct. Given this information, there is a significant motivation for the defendant to abscond from any future hearings despite any combination of bail conditions imposed by this court. This consideration alone is sufficient to prove by a preponderance of the evidence that release will not reasonably assure the appearance of the defendant. Moreover, upon information and belief, the defendant has immediate family members currently living in Ukraine. Because of his flight-risk, particularly in light of his

continued pattern of criminal conduct, discussed supra, and his known ties to a foreign nation, this Court should find that no condition or set of conditions could reasonably assure the defendant's appearance in the future.

WHEREFORE, the State respectfully requests this Honorable Court:

- A. Deny the defendant's motion for evidentiary bail hearing ; or
- B. Schedule a hearing in this matter; and
- C. Grant such other relief as this Court deems just and equitable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Benjamin Maki, do hereby certify that I have forwarded this a true copy of the within motion to counsel for the defendant on this 6th day of April 2020.

/S/ Benjamin W. Maki