State of New Hampshire

DEPARTMENT OF SAFETY
BUREAU OF HEARINGS
James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305

REPORT OF HEARINGS EXAMINER

RESPONDENT: Volodymyr Zhukovsky
DOB: 12/21/1995
HEARING DATE: 05/08/2024 & 06/19/2024
HEARING LOCATION: Concord
DMV FILE #: None
DOS HEARING #: HR202333233
REFERENCE: Fatal Crash 0048
PRESIDING HEARINGS EXAMINER: Ryan N. McFarland, Esq.
STATE REPRESENTED BY: David Hilts, Esq.
RESPONDENT REPRESENTED BY: Earle Wingate III, Esq.
OTHER PERSON(S) PRESENT: Stephen Kace – NHSP; Sgt. Scott Atherton – NHSP; TFC Gregory Hildreth – NHSP; Lt. Jay O'Leary – NHSP; Nicholas Quintiliani – NHSP; Kathleen Murray – NHSP; Sgt. Craig Gagne – NHSP; Chris McDutt; Kathy McCormack; Jon Arnold; Alanna Flood; Ray Brewer; Todd Bookman; Lane Turner; Laura Crimaldi; Victoria Knowles; Danielle Wilkins; Dawn Brindley; Marylou Welch; Manuel Ribeiro; Nicholas Corr; Christopher Bradshaw; Brittany Mazza; Matthew Ferazzi; Krester Perry; Annette Perry; and Pat Rainboth.

The Examiner advised the parties regarding the right to copy of the recording and procedure for obtaining same, and the Respondent's right to be represented by counsel. The parties were also informed of the scope of the hearing.

LIST OF EXHIBITS:

STATE

1. Photo of Truck
2. Photo of Trailer
3. Photo of Truck – Crash Scene
4. Photo of Truck – Crash Scene
5. Photo of Truck – Crash Scene
6. Photo of Truck on Trailer
7. Transcript of Interview with Respondent on 06/21/2019
8. Audio of Interview with Respondent on 06/21/2019
9. PowerPoint Presentation

10. Transcript of Interview with Sally Hull
11. Transcript of Interview with Corinne Jennings
12. Transcript of Interview with Lawrence and Holly Coulter
13. Transcript of Interview with Annie Baron
14. Diagram – Position of Motorcycles
15. Audio Recording – Interview with David Bark
16. Transcript of Interview with David Bark
17. Diagram – Route 2 Crash Scene
18. Diagram Legend
19. The Crash Lab Report dated 02/14/2020
20. Photograph – Motorcycle
21. Photograph – Motorcycle
22. Photograph – Motorcycle
23. Photograph – Motorcycle
24. Photograph – Motorcycle
25. Photograph – Motorcycle
26. Photograph – Motorcycle
27. Photograph – Route 2 Accident Scene
28. Photograph – Route 2 Accident Scene with Markings
29. The Crash Lab Report dated 08/31/2020
30. Diagram – Route 2 Crash Scene
31. The Crash Lab Report dated 05/11/2022
32. Transcript of Interview with Respondent (2nd Interview)
33. Audio Recording of Interview with Respondent (2nd Interview)

RESPONDENT:

A. Report regarding Interview with Adam Bartley
B. Transcript of Interview with Adam Roy Bartley
C. Scientific Boston Inc. Report dated 04/01/2022

PROVISIONS OF LAW:

RSA 263:56, I(g), Safety Rule Saf-C 200 et seq., 209.

STIPULATIONS:

The parties (Attorney Hilts and Attorney Wingate) agreed to present the facts of this matter through offers of proof with the only live witness being the Respondent.

SYNOPSIS OF EVIDENCE

Attorney David Hilts

On June 21, 2019, the Respondent was working for Westfield Transportation delivering vehicles across New England. The Respondent had a license in the Commonwealth of Massachusetts with a commercial driver's license endorsement. The Respondent was operating a gray 2016 Dodge Ram 2500, and he was towing a 42-foot black trailer used to carry automobiles. Exhibit #1 is a photograph of an exemplar truck that is similar to the vehicle that was operated by the Respondent on that date and used by the State's expert. Exhibit #2 is a photograph of the trailer that was used by the Respondent and the photograph was taken the day before the accident. Exhibits #3, 4, and 5 are photographs of the Respondent's truck at the accident scene. The truck and trailer combination was approximately 62 feet long. This was the third day that the Respondent was working for Westfield Transportation. The Respondent crashed a tractor trailer truck on 06/03/2019 while working for another company and was fired by that company on 06/07/2019 for the crash and for failing to provide a timely urine sample.

The Respondent told the State Police on the date of the accident that he woke up around 6:30 AM after going to bed between 10 PM – 11PM the night before. The Respondent told investigators that he delivered three vehicles the day before. The Respondent got a ride from his boss around 7 AM to the yard where the truck and trailer were located. After getting gas, the Respondent traveled to Clifton Park, NY, just north of Albany, to load a Toyota Rav4. The Respondent arrived at New Country Toyota in Clifton Park, NY between 10 – 10:30 AM. The Respondent traveled to Vermont before taking a break at Wells River, VT to eat two slices of pizza. The Respondent dropped the vehicle off at Berlin City Toyota and left that facility around 6:10 PM. The Respondent was traveling on Route 2 in Randolph, NH heading back home when the crash occurred between 6:27 PM – 6:40 PM.

Two days after the accident, on 06/23/2019, the State Police spoke with Sally Hull who said she observed a truck and trailer carrying a vehicle while they were traveling on Route 302 in Lisbon, NH around 4:30 PM on 06/21/2019. Ms. Hull report that she was concerned about the truck and trailer as the truck was swerving from the right to the left to the point that Ms. Hull informed her passenger that maybe they should call the police. Ms. Hull informed the State Police that she stayed behind the truck and trailer however the truck eventually pulled over onto the shoulder of the roadway. Ms. Hull said that she did not see the driver but noted that it was a dark colored truck with a Westfield Transportation logo on the truck. Ms. Hull said that the truck traveled over the yellow centerline by feet and was at least halfway into the other lane of traffic. Ms. Hull also indicated that the truck traveled over the white fog line to the right. Ms. Hull indicated that she observed the truck for approximately a mile, and it went over the centerline on at least two occasions and possibly a third.

The State Police spoke with Corinne Jennings, the same day, who observed the truck and trailer just before the accident on Route 2 in Randolph, NH. Ms. Jennings indicated that she first observed the trailer "whipping" and out of control. Ms. Jennings indicated that another vehicle passed her and got in between her and the trailer, but she did see the trailer going towards the centerline. Ms. Jennings indicated that she did not see the initial impact but did observe the truck hitting the motorcycles.

On 06/23/2019, the State Police spoke with Lawrence and Holly Coulter who had just left their house in Jefferson, NH on 06/21/2019 around 6 PM. They indicated that they were driving by the Mount Jefferson Notch Motel and observed a large group of motorcycles getting ready to leave. Lawrence was driving and had to slam on his brakes as a truck and trailer driving in the opposite direction almost took out the vehicle in front of them. The truck missed the vehicle by inches and when the truck passed their vehicle, the truck was back in the correct lane but the trailer was still in the opposite lane of travel. They indicated that they both noticed that the truck and trailer were in the opposite lane of travel by at least a foot. Holly Coulter told the State Police that she looked right at the driver and it looked like he was reaching for something or had dropped something.

On 06/22/2019, the State Police spoke with Annie Baron who was traveling in a vehicle that was directly behind the Respondent's vehicle prior to the accident. Ms. Baron indicated that the Respondent's vehicle was traveling into the oncoming lane of travel on multiple occasions to the point at which he would have struck traffic in the oncoming lane, however, there was no traffic in the oncoming lane at that time. Ms. Baron stated that one time 50% of the vehicle was over the centerline, and a second time about 75% of the vehicle was over the centerline.

The State Police spoke with David Bark who was a member of the Jarheads Motorcycle Club, and he indicated that Al Mazza was the lead motorcyclist in the group and looked over his shoulder briefly to make sure everyone got out of the parking lot. Mr. Bark indicated that he saw a truck coming the opposite direction with the tire on the yellow centerline and then strike Mazza's motorcycle head on. Mr. Bark also spoke with the National Transportation Safety Board in which he indicated that he observed the Dodge truck either on or over the centerline and it appeared that Mazza's motorcycle moved to the right just before the accident.

During his initial interview with State Police, the Respondent stated that he was traveling on Route 2, took his eyes off the roadway and reached down towards a cup holder by the passenger's seat for a can of Canada Dry. The Respondent said that he reached down to grab it and swerved a little to the left. The Respondent indicated that he thought at first that he hit a car. The Respondent said that he might have gone onto the yellow line and that the motorcycle was right there near the yellow line. The Respondent stated that he may have gone to the left of the yellow centerline by a little bit. The Respondent stated that once he hit the first motorcycle, the airbags went off and he lost control of the truck striking 4-5 other motorcycles. The Respondent told investigators that he believed that he caused the accident.

As a result of the accident, Al Mazza, Daniel Pereira, Michael Ferazzi, Aaron Perry, Desma Oakes, Edward Corr, and Jo-Ann Corr were killed. Joshua Morin and Steven Lewis suffered serious injuries related to the accident.

The New Hampshire State Police conducted an investigation of the accident which included digital mapping of the accident scene. The investigation was conducted to determine where the accident had occurred. Based upon a tire mark on the roadway by the trailer, the State Police initially indicated that the Respondent's truck was approximately 1.3 feet over the centerline and the trailer was approximately 1.5 feet over the centerline when the accident occurred.

The State had the Crash Lab review the accident scene and evidence to present an

independent report regarding the accident. The Crash Lab used information from the State Police along with other information received. The Crash Lab noted left front and side damage to the truck. The Crash Lab noted left side damage to Mr. Mazza's motorcycle. The Crash Lab did not find any damage to the components to the left side of the front tire of Mr. Massa's motorcycle. The Crash Lab investigation concluded that the impact between the truck and the motorcycle caused a catastrophic air loss in the front left tire of the truck and fluid loss from the motorcycle. The Crash Lab report indicated that the deflated tire caused a scuff mark on the westbound centerline. The Crash Lab report indicated that the tire of the motorcycle would have been within its own lane however the faring of the motorcycle would have extended over the area above the centerline of the roadway. The Crash Lab completed an addendum to their original report dated 08/31/2020 to address findings made by Trooper Wilenski. The updated Crash Lab Report indicated that they agreed with Trooper Wilensky's finding that Mr. Mazza's motorcycle was in a lean during the point of impact. The Crash Lab report indicated that the motorcycle was at a 10% lean upon impact and was able to discredit a 0% lean and 30% lean based upon the damage to the motorcycle. This analysis determined that the motorcycle driven by Mr. Mazza was leaning away from the Respondent's truck at the time of impact, but not to the extend that the motorcycle would be sliding. The Crash Lab report reiterated that the front left tire of the Respondent's truck was on the centerline when the impact occurred. The Crash Lab issued a third report on 05/11/2022 to disagree with the findings of the Scientific Boston Inc. report. The Scientific Boston Inc. report indicated that Mr. Mazza's motorcycle was in a slide prior to the accident and even though the Respondent's vehicle was on the centerline, the accident would have occurred even if the Respondent's vehicle was completely within the correct lane of travel. The Respondent's trailer extended 11 inches on each side beyond the width of the truck.

Shortly after the accident, Trooper Newcomb took the Respondent for a blood draw and asked the Respondent if he had ever been in trouble before. The Respondent referenced a 2013 DWI conviction. The Respondent was on pretrial release from an OUI arrest in Connecticut from a May 11, 2019 incident. During the initial interview with Sgt. Cote, the Respondent denied the use of alcohol or any prescription medications on the date of the accident.

On June 21, 2019, the Respondent was interviewed by Det. Sgt. McLaughlin and Det. Torsey of the New Hampshire State Police. At the start of the interview, the Respondent asked if the State Police had received the test results of his blood. The State Police did have the results which were positive for cocaine, fentanyl, and opiates/morphine. During the interview, the Respondent admitted that he had a drug problem. The Respondent admitted that he uses heroin and that he had previously flipped his truck in Texas. The Respondent admitted that he was using heroin and cocaine. The Respondent admitted that he had two bags of Heroin and some Cocaine on the morning of the accident. The Respondent admitted that he hadn't had any drugs since Saturday and during the interview on Monday, he was not feeling that well. The Respondent admitted that he was using drugs twice or three times a day in the weeks leading up to the accident. The Respondent indicated that he thought he was ok to drive on the day of the accident. The Respondent agreed with Det. Torsey that he should not have been driving after he dropped off the vehicle. The Respondent agreed with Det. Torsey that his drug use led to the accident and that if he was not driving, then the people would not have died.

Attorney Earle Wingate:

There is no complaint about the Respondent's driving on any stretch of the route the Respondent took that day until the statement from the individual (Sally Hull) who observed the Respondent in Lisbon, NH. Attorney Wingate believes based upon the statement of David Bark that Al Mazza must have looked over his left shoulder to determine if all the motorcycles made it onto the roadway.

The State Police interviewed Adam Bartley who was driving several vehicles behind the Respondent's vehicle and, other than noticing the fact that the Respondent stayed in the left lane when there were two travel lanes, he did not observe anything else that made him concerned. Due to the roadway, he did not witness the accident but came upon it. Mr. Bartley did not make any observations regarding any impact the sun may have had.

Toxicology reports were completed on the individuals that died in the accident which indicated that Mr. Mazza's blood alcohol content as .135 and two of the other drivers had a blood alcohol content of .07.

Trooper Wilensky did an accident reconstruction report and then the State had a report completed by Crash Lab which disagreed with some of the findings of Trooper Wilensky. Trooper Wilensky then did a supplemental report which then led to another supplemental report from Crash Labs.

Volodymyr Zhukovsky (Respondent):

He graduated high school and was home schooled after his freshman year. He has been working since he was 14 years old and started working construction in high school. He started car hauling when he turned 21 and now he does IT. On the date of the accident, it was just another day at work where he left the yard, picked up a vehicle, and dropped the vehicle off in New Hampshire. He left the dealership after dropping off the vehicle and was traveling on Route 2 in Randolph when the accident took place. He remembers the interviews that he gave to the New Hampshire State Police. The first interview happened about 4 hours after the accident and he was in shock. He believes that what he knew at that time was not actually what happened. He was assaulted after the accident took place.

He was with the State Police for about 5 hours that evening. He spent most of his time with Trooper Newcomb. He was never asked to take field sobriety tests. He heard Trooper Newcomb tell the County Attorney that he was alert and coherent. He gave a second interview with the State Police while in custody in Massachusetts. He was not feeling the effects of alcohol or drugs when the accident occurred. The road is very curvy on this stretch of Route 2, and he believed that the speed limit was 50 MPH. When he crested the hill, he saw a motorcycle in his lane of travel and had to hit the brakes. He doesn't believe that he caused the accident. He believes that he was at the wrong place at the wrong time. He remembers reaching down to get a drink, but he believes that it happened before the accident and that is what the witness observed.

Cross-Examination:

He was truthful with the New Hampshire State Police during his second interview. He was not completely honest and truthful with the New Hampshire State Police during his first interview. His boss picked him up within an hour or two of when he woke up on the date of the crash. He did use drugs that morning of the accident. His boss drove him to the yard where the truck was. He got gas at a local truck stop and then headed up to the Albany, NY area to pick up the vehicle. He is familiar with that stretch of highway. He picked up a Toyota Rav4 at New Country Toyota around 10:30 AM. He was not familiar with the route of travel through Vermont as he never took that route before. He is required to take a 30-minute break after 8 hours of driving. He took a break that was about an hour to an hour and a half long when he ate. He does not remember pulling his vehicle to the side of the roadway on Route 302 in Lisbon, NH.

When he reached down for his drink, he does not know where his truck was located within the roadway. He believes that the witness accounts are not accurate. He used heroin and cocaine every day in the weeks leading up to the date of the accident. He informed the State Police that he usually uses twice a day. He informed the State Police that when he was not working, he would use three times a day. He believes that the State Police put words into his mouth during the interviews. He believed that he was ok to drive on the date of the accident. When he told the State Police that he believed that his drug use caused the accident, he was not being truthful. It is not enjoyable to be crashing after you have used drugs.

In his interview with the State Police, he did tell them that at times he uses Red Bull and sweets to keep him going when he is getting tired or coming down from the drugs. He does experience a low point when he is not feeling well after he has not used drugs for a period of time which is what he experienced during the second interview. He took drugs the morning of the accident so that he could go to work and not feel sick. He believes that if he was impaired at the time of the accident then that would be a bad thing. His second interview with the State Police occurred on a Monday and he informed the State Police that he last used drugs on Saturday and given the amount of time, he was not feeling well. He is familiar with going through withdrawals. On the morning of the crash, he used two bags of heroin and a half gram of cocaine. He was not impaired by the drugs that he took that morning when he started driving on the day of the crash. The crash happened about 12 hours after he had taken the drugs. He did not tell the State Police that he observed the motorcycle in his lane just prior to the crash. He told the State Police in his initial interview that he thought that he hit a car because there was a car in front of the motorcycles.

Re-Direct Examination:

During the trial, the witnesses were under oath. During the trial, Ms. Jennings testified that she did not observe his truck go over the centerline. During the trial, Ms. Baron testified that she observed his vehicle go over the centerline, however he believes that this is not consistent with the other statements made by the witnesses. His boss did not make any comments to him about impairment. He does not believe that his boss would let him drive if the boss thought he was impaired. He does not believe that anyone at the dealership called the police regarding any impairment. He interacted with the Sales Manager at Berlin City and he believes that this individual told the State Police that he was coherent.

Re-Cross Examination:

On the day of the accident, his boss did not know that he used drugs that day or that he used drugs regularly.

LEGAL ANALYSIS

In this case, the State has the burden of proving, by a preponderance of the evidence, that the Respondent did drive a vehicle and by reckless or unlawful operation, cause or materially contribute to an accident which resulted in the death of another person. RSA 263:56-I(g).

Here, the State has established that the respondent drove a 2016 Dodge Ram 2500 that was towing a 42-foot trailer when it collided with a 1998 Harley-Davidson Electra Glide motorcycle operated by Mr. Al Mazza causing a catastrophic crash.

New Hampshire RSA 265:79-b states in pertinent part, "Whoever upon any way drives a vehicle negligently or causes a vehicle to be driven negligently, as defined in RSA 626:2, II(d), or in a manner that endangers or is likely to endanger any person or property shall be guilty of a violation".

New Hampshire RSA 626:2 II (d) defines "negligently" with respect to a material element of an offense when he fails to become aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that his failure to become aware of it constitutes a gross deviation from the conduct that a reasonable person would observe in the situation."

The evidence presented established that the Respondent consumed two bags of heroin and a half gram of cocaine around 6:30 AM the morning of the accident. The Respondent's testimony is that he used that amount of drugs that morning so that he could go to work and not feel sick. The evidence established that in the weeks leading up to the accident, the Respondent was using 2-3 times a day. The testimony established that after a period of time without using the Respondent would not feel good and would need to use again to feel better. There was evidence that the Respondent informed investigators that he would use energy drinks like Red Bull and candy when he felt tired or was coming down from drugs. There is no evidence presented from either side that the Respondent used any drugs from the time he left his house until the time of the accident. It was roughly 12 hours between the time the Respondent last used drugs and the time of the accident. While there is not sufficient evidence to conclude that the Respondent was impaired at the time of the accident, there is a reasonable inference that the Respondent was likely coming down from his drug use since it had been 12 hours since his last use and he reported that he was using 2-3 times a day during this time period in order to feel good.

The State presented statements from four independent witnesses that observed the Respondent's driving behavior prior to the accident. All of these statements were taken in close proximity to the date of the accident. These statements are given significant weight as there is no reason for these witnesses to be biased and some of the witnesses made their observations without

even knowing that the accident had occurred. These statements described serious, dangerous driving behavior by the Respondent with his truck and trailer that could have put other motorists in danger prior to the serious crash.

Ms. Hull gave a statement that she observed a truck and trailer matching the description of the Respondent's truck and trailer around 4:30 PM in Lisbon, NH and that the truck and trailer were swerving and went over the centerline multiple times. Ms. Hull indicated that the truck and trailer eventually pulled over and she noticed the logo of the company that the Respondent was employed by. The Respondent testified that he does not remember pulling over on Route 302 in Lisbon, NH which is concerning because there is no reason that Ms. Hull would not be truthful about this, and this provides evidence that the Respondent may not have been paying full attention to the operation of his truck and trailer two hours prior to the accident.

Ms. Jennings gave a statement that she saw the trailer "whipping" and out of control and then saw the trailer going towards the centerline. The Respondent is correct that Ms. Jennings did not observe the truck near the centerline, however, this corroborates her statement as she had indicated that another vehicle came in between her vehicle and the Respondent's truck and trailer. Ms. Jennings statement is probative as it provides evidence that the Respondent's trailer was out of control just prior to the accident.

Mr. and Mrs. Coulter provided a statement regarding their observations of the Respondent's vehicle a short period of time prior to the accident. The Coulters were driving in the opposite direction of the Respondent and were traveling the same direction that the motorcycles would be traveling. The statement indicated that the Respondent's truck and trailer almost took out the vehicle in front of them and they had to hit the brakes and move their vehicle towards the white fog line to avoid a collision. They indicated that the Respondent's truck and trailer missed the other vehicle by inches and they both observed the truck and trailer in their lane of travel. Ms. Coulter also indicated that she was looking right at the driver, and it looked like he was reaching for something or had dropped something.

Ms. Baron provided a statement that she was traveling in a vehicle directly behind the Respondent's truck and trailer and that she observed the truck and trailer go over the centerline multiple times. Ms. Baron estimated that 50% of the truck was in the opposite lane on one occasion and 75% of the truck was in the opposite lane on another occasion. The Respondent testified that he did not believe that Ms. Baron's statement was consistent with other witnesses, and he challenged her concern for his driving since she indicated that she went back to caring for her child in the back seat after witnessing the driving behavior. Ms. Baron's statement of the Respondent's driving behavior is consistent with the other statements referenced, the fact that Adam Bartley did not observe any significant driving behavior other than that the Respondent stayed in the left lane does not diminish the observations made by the other witnesses.

The evidence presented regarding the accident reconstruction reports that were completed indicate that the Respondent's front left tire of his truck would have been on the double yellow centerline when the collision occurred. The evidence suggests that Mr. Mazza's motorcycle was located inside the proper lane of travel, however, the faring of the motorcycle would have occupied the area above the centerline. The evidence indicates that this was not a head-on collision but rather, the side of the motorcycle was struck by the Respondent's truck. Exhibit C presented by

the Respondent indicates that the Respondent's truck was moving forward with a left steer bias which would indicate that the truck was heading into the oncoming lane of traffic. The evidence indicates that the Respondent's truck and trailer did continue across the opposite lane of travel striking several motorcycles.

The Respondent testified that when he crested the hill, he observed a motorcycle in his lane of travel and hit his brakes. There is no other independent evidence that would suggest that Mr. Mazza's motorcycle or any other motorcycle was located in the Respondent's lane of travel prior to the accident. While the Respondent testified that he hit his brakes, there is no mention of any braking marks on the pavement by the accident reconstruction reports, but rather, they make mention of tire marks that were likely made during the accident sequence. There is also no evidence that the Respondent took any evasive action to move or steer to the right prior to or during the accident. The Respondent's statement to the New Hampshire State Police just after the accident was that he thought he hit a car because he thought that there was a car in front of the motorcycles. The Respondent also initially told investigators that he reached down and swerved a little to the left just prior to the accident. The Respondent's statements shortly after the accident are given more weight than his testimony as they were given much closer in time and also have less chance of bias or opportunity to be fabricated to support a defense.

It is important to examine all of this evidence in the totality of the circumstances because, when examining all of these facts together and not in isolation, the evidence clearly supports a finding that the Respondent operated his truck and trailer in a negligent manner which was unlawful and caused or materially contributed to the accident which resulted in the death of Al Mazza, Daniel Pereira, Michael Ferazzi, Aaron Perry, Desma Oakes, Edward Corr, and Jo-Ann Corr. The manner in which the Respondent operated his truck and trailer up until the time of the accident was likely to endanger the public.

Consequently, the State has established that the Respondent is in violation of RSA 263:56 I(g) and is subject to a license/operating privilege suspension for not more than 7 years. RSA 263:56 III(a).

FINDINGS OF FACT:

1. That on June 21, 2019, the Respondent was operating a 2016 Dodge Ram 2500 towing a 42-foot trailer.

2. The Respondent was traveling on Route 2 in Randolph, NH.

3. The Respondent had consumed two bags of heroin and a half ounce of cocaine around 6:30 AM on the date of the accident.

4. The Respondent traveled from Westfield, MA to Clifton Park, NY to pick up a Toyota Rav4 and then traveled to Gorham, NH to deliver the vehicle.

5. A witness observed a vehicle and trailer matching the description of the Respondent's truck and trailer traveling erratically on Route 302 in Lisbon, NH around 4:30 PM.

6. Three independent witnesses observed the Respondent's vehicle swerving and traveling into the oncoming lane of travel prior to the accident.

7. The Respondent was traveling on Route 2 in Randolph, NH when his truck's front tire went onto the double yellow centerline striking the side of the motorcycle driven by Mr. Mazza.

8. This collision set off a series of events as the Respondent's truck and trailer traveled completely across the opposite lane of travel striking several motorcycles and leaving the roadway.

9. The Respondent's negligent operation of the 2016 Dodge Ram 2500 caused or materially contributed to the accident.

10. The crash resulted in the death of Al Mazza, Daniel Pereira, Michael Ferazzi, Aaron Perry, Desma Oakes, Edward Corr, and Jo-Ann Corr.

CONCLUSION OF LAW:

The Respondent, by unlawful operation of a motor vehicle on June 21, 2019 on Route 2 in Randolph, NH, caused or materially contributed to a crash that resulted in the death of Al Mazza, Daniel Pereira, Michael Ferazzi, Aaron Perry, Desma Oakes, Edward Corr, and Jo-Ann Corr. Consequently, under RSA 263:56 I(g) and Saf-C 209 the Respondent is subject to license/operating privilege suspension for up to 7 years.

STATEMENT – NEXT OF KIN:

David Bark:

He was a member of the Jarheads motorcycle club. He was the fourth motorcycle in line during the crash. His involvement in the motorcycle crash changed him. He has never lost so many individuals before or seen such a tragic scene. He believes it is absurd that an individual that caused so much pain is requesting his privileges back. The Respondent has a history of disregarding the law. The Respondent needs to be prevented from driving in this state ever again.

Manuel Ribeiro:

He is a former member of the Jarheads motorcycle club. His life has dramatically been changed since the crash. He has never seen so much destruction in his life. Due to his history, the Respondent is a danger to individuals on the roadway. All seven who died were good people and five were wearing helmets. His wife will never ride with him again after the crash which has affected his relationship.

Brittany Mazza:

Her father was Al Mazza. It was devasting to hear about the accident. She was trying to rebuild her relationship with her father and that will not be able to continue. The Respondent was on the road due to a failure of the Massachusetts RMV. She asks that the Respondent remained suspended, so no other family must go through this again.

Dawn Brindley:

She was the number six motorcycle in the line during the crash. She remembers seeing bodies on fire and scattered on the roadway. The Respondent destroyed many lives during that day. Her life has been a roller coaster since the crash as she suffers from post-traumatic stress disorder and has panic attacks. The Respondent does not deserve to operate a motor vehicle in the State of New Hampshire.

Mary Welch:

She will never understand how the Respondent was acquitted of his charges. The Respondent chose to get high that day and kill seven wonderful people.

Matthew Ferazzi:

He is the son of Michael Ferazzi. The Respondent has never taken accountability for his actions. The Respondent is lucky to live in this country and has been lucky to be revived by medical personnel. The Respondent has ruined many lives. The Respondent has taken away so many memories from him.

Statement of David John Ferazzi Jr.:

Michael Ferazzi will be deeply missed by his family and friends. The other victims will also be greatly missed by so many people. The Respondent's right to drive should be permanently revoked.

Statement of David and Betty Ferazzi:

The Ferazzi family has been rocked by this tragedy. Michael Ferazzi did not get to attend his son's wedding or meet his new grandchildren. The family is haunted by the thoughts of Michael in his casket and his final ride to his burial.

Statement of Brian Ferazzi:

Seven families lost people that were special to them. My life will never be the same. You have caused depression that has changed my life. The Respondent has shown no remorse for his actions and laughed during the proceedings. The Respondent's story that he was reaching for a drink doesn't make sense and he should have exercise more care when driving a commercial truck towing a trailer. The Respondent has avoided jail time however he should not be given his license back.

Statement of Isadura Pereira:

Daniel Pereira was a loving individual who loved the Marines. He was very involved in fundraising for veterans and children. He was a humble and quiet man but wanted to make a difference. He never got the opportunity to retire, walk his daughter down the aisle, or meet his grandchild. The Respondent had a history of bad driving behavior. The Respondent should be denied his driving privileges for as long as possible and should be required to submit to drug counseling.

Statement of Helen Pereira:

My life and my family's lives were shattered because of the driving behavior of the Respondent. The coroner informed her that her husband had "second to minutes" when asked if her husband suffered. Her husband was a kind generous man. He did not get to walk his daughter down the aisle or meet his grandchild. The Respondent has shown no remorse for his actions.

STATE'S RECOMMENDATION:

The Director of Motor Vehicles suspended the Respondent's operating privileges under the authority of RSA 263:59 for driving improperly or to endanger the public. The Respondent endangered the public by a pattern of unlawful negligent driving on the date of the accident.

The State requested that the Respondent's license/operating privileges be suspended for a period of seven (7) effective on the date of the final order under RSA 263:56 I (g) and that the Respondent not be credit for the previous suspension time issued under RSA 263:59. The State also requested that the Respondent be required to submit a then current evaluation from a licensed alcohol and drug counselor prior to restoration.

RESPONDENT'S STATEMENT:

He wishes to offer his condolences to the victims and their families that were affected by the accident. The accident has changed his life. He will be five years sober in a few days. He is scheduled to see a licensed alcohol and drug counselor.

RESPONDENT'S RECOMMENDATION:

The Respondent would agree to submit a favorable evaluation from a licensed alcohol and drug counselor prior to restoration. The Respondent would request a seven (7) year loss of license/operating privileges backdated to the date of the original suspension with five (5) years imposed and the remaining two (2) years held in abeyance for a period of time determined by the Bureau.

SANCTION:

This is a tragic motor vehicle accident that took the lives of seven individuals and affected the lives of countless others. When determining an appropriate sanction, the aggravating factors

and the mitigating factors must be weighed.

The most aggravating factor is that this is an accident that did not have to occur. The testimony is clear that there were warning signs for the Respondent to recognize that his driving behavior was not reasonable or safe and he should have pulled over to address any issues. The Respondent consumed a large amount of drugs that morning and while there is not sufficient evidence to prove that the Respondent was impaired, it is clear that the Respondent was not completely focused on his driving and was distracted because he was likely not feel well because it had been 12 hours since he last consumed drugs. The Respondent failed to recognize that he needed to exercise more care when operating a truck and trailer that was approximately 62 feet long on roadways with many curves and bends. The Respondent's driving behavior put many individuals at risk even before the tragic crash. One of the most aggravating factors is that this was not an isolated incident as the Respondent had told the New Hampshire State Police that he had previously flipped a truck in Texas and that he was using drugs at the time of that accident.

The only mitigating factor when deciding the appropriate sanction is that the Respondent has testified that he has been sober for 5 years and that he has changed his life since the accident.

When weighing the aggravating factors and mitigating factors, the aggravating factors far outweigh the mitigating factors as the loss of human life, especially seven individuals that were so deeply loved, must be given more weight than the inconvenience related to a loss of driving privilege. A driver's license is a privilege, and operators must appreciate that privilege and the great responsibility that goes along with that privilege. When someone makes a decision to drive in a very negligent manner and put innocent lives in danger, a suspension of an individual's license is an appropriate measure to ensure the safety of the public and future compliance with the laws.

The State's position that the suspension previous issued under RSA 263:59 should be separate and distinct from any suspension issued under RSA 263:56 I (g) is misplaced as RSA 263:59 provides the Director of Motor Vehicles the authority to issue an immediate suspension without the need for the hearing and RSA 263:56 I provides the framework for a suspension after a hearing. RSA 263:56 III provides the length of the suspension based upon the section of the statute that has been violated. The two statutes are not stand-alone statutes but rather must be read together as part of the larger statutory scheme.

DISPOSITION:

SUSPENSION of Respondent's driver's license/operating privileges for a period of seven (7) years, effective 06/24/2019.

The Respondent may have his license/privilege to drive reinstated after this period of time, as long as the following conditions have been satisfied:

1. Respondent must request a hearing, in writing. The next of kin shall be notified of any request for such hearing and are entitled to notice of any such hearing and have a right to be present and make a statement.

2. Good behavior to mean no operating a motor vehicle during the period of suspension.

3. Completion of the 6 hour driver attitude course with proof to be submitted within 6 months of license/operating privilege reinstatement.

4. The Respondent shall file an SR 22 proof of insurance and maintain such for 3 years from the date of the fatal accident restoration hearing.

5. The Respondent shall pay a reinstatement fee of $100 to the Director of Motor Vehicles.

6. The Respondent shall submit a then current (less than 6 months old based upon date of restoration request) low-risk evaluation from a Licensed Alcohol and Drug Counselor.

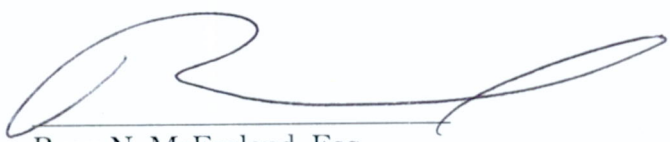
RSA 263:76 APPEAL FROM SUSPENSION OR REVOCATION.

Any person whose license has been suspended or revoked, except where such suspension or revocation is mandatory, or any person who has been denied a license, may petition, within 30 days thereafter, the superior court in the county where such person resides. The court, upon 14 days' written notice to the director, shall determine, after hearing, whether the decision of the director is unreasonable or unlawful. The burden of proof shall be upon the petitioner. All findings of the director upon all questions of fact properly before him shall be deemed prima facie lawful and reasonable. The decision appealed from shall not be set aside or vacated except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence before it, that such order is unjust or unreasonable. The provision of RSA 263:56, IV shall apply in appeals concerning accidents involving motor vehicle fatalities.

RSA 263:56, IV (excerpt)

The decedent's next of kin or any seriously injured person, if aggrieved by the director's order, shall have standing under RSA 263:76 to file a petition of review in the superior court for review of the questions of law in the director's order. If an appeal is made under RSA 263:76 concerning an accident involving a motor vehicle fatality or serious injury, the decedent's next of kin or any seriously injured person shall be notified of the filing of the appeal and the date of the appeal hearing and shall have the right to make a written statement to the court at the time of the Hearing.

A copy of this report was e-mailed to Attorney Earle Wingate III, Attorney David Hilts, and Sgt. Stephen Kace on July 10, 2024.



Ryan N. McFarland, Esq.
Chief Hearings Examiner