

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2012 MAY 25 PM 4:44

STATE OF WEST VIRGINIA

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

V.

Case No.: 10F-1068
Judge Carrie Webster

DAVID WASHINGTON KINNEY

FINAL ORDER

On March 8, 2012 came the Defendant, David Washington Kinney, in person and by counsel, J. Timothy Dopier and Olubunmi T. Kusimo, Esquire, and also came the State of West Virginia by Erica Lord and Benjamin Freeman, Assistant Prosecuting Attorneys for the Office of the Kanawha County Prosecuting Attorney, for the purpose of a pretrial hearing and oral argument on Defendant's previously filed motions to wit: (1) Motion to Dismiss/Motion in Limine to Suppress; (2) Motion in Limine to Exclude Evidence Regarding Ammunition, Weapons, and Firearms Seized by Law Enforcement; (3) Motion to Suppress Identification of Vehicle by State's Witness; (4) Motion in Limine to Suppress Alleged Video of Defendant and Defendant's Vehicle; and (5) Motion for Supplemental Discovery.

Whereupon, after considering the briefs and memoranda filed by both parties, the testimony presented at the hearing, and the oral argument of counsel, this Court hereby makes the following findings of fact and conclusions of law in support of its ruling on the pending motions.

RELEVANT FACTUAL BACKGROUND

1. On October 22, 2010, a Kanawha County grand jury returned a sealed indictment

charging David Washington Kinney with one count of First Degree Murder in the fatal shooting death of the decedent, Jeremy Parsons, on July 4, 2010, in Charleston, West Virginia.

2. On October 27, 2010, the Defendant was arraigned on the felony offense of First Degree Murder, wherein he entered a plea of not guilty. He also asserted his constitutional and statutory right to a speedy trial during the September 2010 term of court. In accordance therewith, the court set Defendant's criminal jury trial on January 3, 2011.
3. The court also granted Defendant's oral motion for expedited discovery, to which the State voluntarily agreed to produce and deliver to the Defendant on October 29, 2010, just two days after his arraignment.¹
4. On November 3, 2010, defendant's court-appointed counsel filed a written motion for discovery. On the same day, J. Timothy Dopier, Esquire and Olubunmi T. Kusimo, Esquire, filed a formal notice of appearance, thereby relieving the Kanawha County Public Defender's office from further legal representation of the defendant.
5. On November 16, 2010, the defendant's present legal counsel filed additional motions for discovery.
6. On December 8, 2010, the State of West Virginia filed a Request for Reciprocal Discovery, and its witness list disclosure.²

¹ The Court notes that Kanawha County Prosecuting Attorney Mark Plants has implemented an "open file" policy, wherein his office voluntarily discloses and immediately provides the accused and his or her legal counsel with a copy of all case-related discovery (i.e. witness statements, investigative reports, forensic test results, etc....) Thus, even though the W.Va. Rules of Criminal Procedure limits the scope of discovery that the State is required to provide to defendant prior to trial, the State has not asserted any objection to disclosure and production of the same in the instant case.

² The State's filing also acknowledged its continuing duty of due diligence to immediately provide defense counsel with evidence as it became available.

7. Despite this court's previous order directing expedited production of discovery, and the defendant's subsequent discovery motions counsel requesting the same, the State did not provide the defendant with any case-related discovery until December 17, 2010.

8. The State's supplemental discovery responses included five disclosures and/or documents, including certain test results previously performed and the name of the expert the State intended to offer at trial to verify the test results.

9. On December 21, 2010, the defendant filed a motion seeking a brief continuance of his January 3, 2011 trial date. During a hearing on January 5, 2011, the court learned that the State failed to timely furnish the defendant with court ordered discovery that the State had agreed to promptly produce following the defendant's arraignment on October 27, 2010.

10. Based on the above, the court found that the State's delay in the production of discovery was prejudicial to the defendant and hindered his attorneys' ability to properly investigate and prepare for his criminal trial. The court agreed to a brief continuance, and set the new trial on April 4, 2011.

11. The court also chastised the State's attorneys, reminding them they were in violation of their own "open file" policy and of the court's previous order directing expedited discovery.³ Thereupon, the court ordered the State to produce any and all discovery in the case, forthwith and without delay.

12. Due to speedy trial concerns triggered by the delay and continuance of the defendant's trial into the following term, the court reconsidered defendant's bond and directed

³ The record in this matter will reflect that the State assured the court during Defendant's arraignment, that it was in possession of case discovery and would have no difficulty complying with an expedited discovery schedule, in light of Defendant's incarceration and assertion of his speedy trial rights.

that it be set in the amount of \$250,000 dollars proper surety, with home confinement added as an additional term and condition of said bond.

13. On April 21, 2011, the court agreed to continue the trial to August 1, 2011.

14. On July 1, 2011 the State filed a motion to continue the trial because a crucial witness was unavailable. The defendant did not object, and the court granted the motion and rescheduled the trial on November 14, 2011.

15. On September 15, 2011, a hearing was held on defendant's motion for independent examination and inspection of the shell casings recovered at the scene, and the vehicle the decedent was driving when he was fatally shot. The court heard for the first time that the State failed to make arrangements for defendant to inspect the shell casing or the subject vehicle, despite this court's previous order, and the repeated efforts of defendant's counsel to do so.

16. The court granted the motion and once again directed the State to immediately make the evidence available to the defendant for inspection and independent testing. At that time, the court did not know that the Charleston Police Department had released the decedent's vehicle more than a year ago.

17. The State assured the court it would comply. In addition, the court verbally admonished the State's attorneys for disregarding the court's previous orders. Despite these assurances, the State failed to comply, despite repeated requests by the defendant again made to view and inspect this evidence.

18. On November 15, 2011, the defendant requested another trial continuance, due to the State's failure to make the shell casings or the subject vehicle available for inspection and independent testing. The court continued the trial to March 26, 2012.

19. In early January of 2012, Assistant Prosecuting Attorney Erica Lord orally informed Defendant's counsel that the shell casings were missing and could not be located. There was no mention of the subject vehicle's location.

20. On January 26, 2012, the State served defendant's counsel with *State's Notice of Lost Evidence*, formally advising the defendant that shell casings had been lost and/or were missing.⁴ There was no mention of the subject vehicle's location.

21. On February 24, 2012, the attorneys for the respective parties appeared in the undersigned's chambers for an informal status conference sought by the judge, the primary purpose of which was to identify a date for the motions hearing, which had been postponed on at least two occasions, and to also discuss the status of the case in general.

22. It was during this informal meeting that the court was advised for the first time that the State could not locate the shell casings, and that the enforcement agency in charge of the criminal investigation was no longer in possession of the vehicle, and had returned it to the decedent's mother shortly after the shooting occurred.

23. A pretrial conference and motions hearing was scheduled on March 8, 2012.

On March 5, 2012, Attorney Lord contacted defendant's counsel to advise that the missing shell casings had been found, and that the State intended to introduce them at trial as evidence. The Court did not become aware of this development until the March 8th hearing.

24. Procedurally, upon motion by one or both parties, the criminal trial has been

continued at least four times since defendant's original trial date on January 3, 2011.⁵

⁴ When questioned by the Court regarding the omission, the State proffered that its runner hand-delivered the document to the Clerk's office on January 26, 2012, the date it was served on the Defendant.

⁵ The original trial date on 1/3/11 was continued to 4/4/11 (which the court subsequently moved to 4/21/11 at the request of defendant's counsel). The 4/21/11 trial date was continued to 8/1/11; the

DISCUSSION

Defendant's Motion in Limine/Suppress Shell Casings

The instant motions seek exclusion of certain physical and material evidence that the State has blatantly failed to produce, and make available for inspection and testing by the defendant. In addition, at all relevant times during this proceeding, the defendant (and court) were led to believe that this evidence existed (i.e. shell casings and subject vehicle) and had been in the possession, custody and control of the Charleston Police Department since July, 2010.

Specifically, the defendant requests that the court suppress any evidence connected to the shell casings and the decedent's vehicle, and further requests that the court conduct a hearing regarding the chain of custody of the shell casings and the decedent's vehicle.

1. Detective Hunt's Testimony

2. Detective Hunt (Hunt), the lead investigator in the instant case, appeared for the hearing on March 8, 2012, and offered the following testimony.

3. Detective Kinder collected the four 10 mm shell casings at the scene, which were initially submitted to the West Virginia State Police Lab on July 8, 2010, four days after the shooting of the victim.

4. Hunt testified he cancelled the testing on the shell casings, and took them back into his custody.

5. On or around August 13, 2010, Hunt signed out the casings from CPD Evidence room and thereafter personally transported the shell casings to Dr. John Bond (Bond) in

8/1/11 trial date was continued to 11/14/11 (by State due to witness unavailability); and the 11/14/11 trial date was continued to 3/26/11 (which the court subsequently moved to 4/12/12, due to pending pretrial motions and a scheduling conflict).

Northampton, England, for testing. Hunt testified that he had personal possession of the casing and witnessed how the casings were handled while in England, and that he was in possession of the casings during the entire trip, and personally returned them to the evidence room.

6. Dr. Bond's report, which was prepared in June 2011, states he received the shell casings in September 2010.⁶ Dr. Bond's report states that the shell casings had small scratches on each surface, and that two of the shell casings had friction ridge detail. The report further indicates that Dr. Bond's findings are not necessarily to a reasonable degree of certainty in his field.

7. In late September to mid-October 2010, Hunt shipped the shell casings and live rounds recovered from the Defendant's house (*via FedEx*, in a sealed box with evidence tape), to Allen McRoberts of McRoberts Forensic Investigations in Temecula, California for additional forensic testing. Hunt testified that he couldn't account for the procedures McRoberts used to preserve the evidence. McRoberts' report stated the friction ridge detail observed by Dr. Bond had no value for comparison, as there was not sufficient ridge detail. McRoberts' shipped the casing back Hunt approximately three weeks later, in the same manner. Upon receipt of the casings, Hunt locked the casings in his filing cabinet, where he says they remained until the he received a phone call directing him to send them back to the State Police Crime lab for additional testing.

8. Importantly, Hunt testified that on or about January 19, 2011, the Kanawha County Prosecuting Attorney's office left a phone message directing him to **"...send the casings back to the Crime Lab for firing pin testing, to test their theory [that] the bullets were fired from a Glock."**

9. Hunt, who was out of town in extended training, contacted Kinder to request his assistance in expediting the process. Hunt said he advised Kinder that the shell casings were locked in his filing cabinet, where the key was located, and directed him to transport the casings back to the WV State Police Crime Lab. Hunt testified that Kinder customary transported the casings back and forth from the CPD and Crime Lab as part of his regular duties.

10. Hunt admitted that neither he nor Kinder signed-out the evidence and that he “forgot” to sign-out the casings when he returned to work at some later time.

11. Hunt states that the shell casings arrived at the lab sometime in January, 2011, but were not tested until December 2011.

12. On December 6, 2011, the shell casings were tested by the West Virginia State Police Lab and a report was copied to the Charleston Police Department. On January 25, 2012, Detective Kinder picked up the shell casings from the West Virginia State Police and secured them in Detective Hunt’s office.

13. On August 31, 2011, Hunt met with defendant’s counsel, who had repeatedly requested an opportunity to examine and potentially perform independent tests on the shell casings. However, Hunt was unable to produce the shell casings for defense counsel.

14. Hunt testified that searched his filing cabinet and CPD Property and Evidence room, and called the Crime Lab to no avail. Hunt called the State Police Lab, asked for the shell casings by Defendant’s name; he did not ask under the decedent’s name or the agency identification number associated with this case because he never had to in past cases. Because the shell casings were stored under the decedent’s name, the State Police Lab informed Detective Hunt the shell casings were not in their custody. Hunt admitted he could not locate the casings due to poor records.

15. The court is not entirely clear when the activity described above actually occurred. However, the instant record of the proceedings in this case clearly reflects that the court nor defendant's counsel was ever advised that the shell casings had been sent to the crime lab or that they might even be at the crime lab, and that includes the time when the defendant's counsel appeared at CPD to inspect the shell casings in August, 2011.

Discovery & Assertion of Speedy Trial Rights

A determination of whether a defendant has been denied a trial without unreasonable delay requires consideration of four factors: (1) the length of the delay; (2) the reasons for the delay; (3) the defendant's assertion of his rights; and (4) prejudice to the defendant. The balancing of the conduct of the defendant against the conduct of the State should be made on a case-by-case basis and no one factor is either necessary or sufficient to support a finding that the defendant has been denied a speedy trial. *State v. Elswick*, 225 W.Va. 285, 295 (2010).

The record in this case clearly reflects that formal discovery was requested by Defendant's initial court-appointed counsel at his October 25, 2010 arraignment.

Defendant subsequently filed several separate motions for discovery, including for the shell casings. The State did not object to Defendant's request, and the Court granted Defendant's motions and ordered the State produce and provide the Defendant with said discovery.

Following the issuance of this order, Defendant made multiple requests to view the shell casings, but was unsuccessful.

At a hearing held on or about September 20, 2011, the Defendant advised the Court that the State had failed to produce the shell casings or the decedent's vehicle for inspection by the Defendant. The State did not object to the Defendant's request.

Based on the above, the Court granted Defendant's motion for independent examination and inspection of the shell casings recovered at the scene, and the Defendant's motion to inspect the vehicle the decedent was in when he was fatally shot. In response to the Court's inquiry concerning the court's previous directive, the State advised that the lead officer in the case had not been available. The State at no time offered explanation why evidence could not be inspected in the officer's absence, particularly in light of the continuing delay and court hearings on the same issue.

The Court also orally admonished the State for the delay and lack of directed immediate compliance therewith.

The State failed to advise the Court or the Defendant that the Charleston Police Department had previously released the subject vehicle to the decedent's mother, or that the vehicle was no longer in the possession or custody of the police department.

At the time said motion was granted, the Court had no reason to believe, based upon the representations of the State at said hearing, that the State had failed to exercise due diligence and/or make reasonable inquiry with the police department regarding location and status of key evidence in the current case.

Following the Order of the Court, the Defendant again made repeated requests to view and inspect this evidence.

In January of 2012, Mrs. Lord orally informed Defendant's counsel that the shell casings were missing. On January 26, 2012, the State of West Virginia placed the Defendant on official

notice that it was unable to locate the shell casings by serving him with a copy of "State's Notice of Lost Evidence." The index of the official file of this matter, which is maintained by the Clerk of the Court, does not reflect that the Notice was ever filed. The State agreed that it should have been filed on January 26, 2012, the day the Notice was served upon defendant. Based upon those representations, the Court directed that an order be prepared to reflect date the Notice was record of this case does not "Notice" was ne

The Court first learned that the shell casings were missing and that the decedent's vehicle was no longer in the State's possession during a status conference held February 24, 2012. However, on March 5, 2012, the State of West Virginia through Mrs. Lord informed Defendant's counsel that the missing shell casings were found, and that the State intended to introduce them at trial as evidence. The Court first learned the shell casings were found during the March 8, 2012 pre-trial hearing.

Shell Casing Evidence/Chain of Custody

On July 5, 2010, officers from the Charleston Police Department conducted a search of the home of Carol Bridges. The evidence seized at her home included numerous firearms and ammunition. On July 12, 2010 officers from the Charleston Police Department executed a search warrant upon Defendant's residence at 930 Central Avenue, Charleston, West Virginia. The officers seized an amount of ammunition, including 10 mm rounds, a desert eagle .50 caliber firearm, and a 10 mm glock magazine.

During the pre-trial hearing, Detective Hunt testified to the chain of custody of the shell casings. Detective Hunt stated that he checked his filing cabinet, the Charleston Police

Department Record room, and phoned the West Virginia State Police Lab in an attempt to recover the casings, but was unable to find them.

When he called the State Police Lab, he asked for the shell casings by referencing Defendant's name; he did not ask under the decedent's name or the agency identification number associated with this case. Because the shell casings were stored under the decedent's name, the State Police Lab informed Detective Hunt the shell casings were not in their custody.

Eventually the shell casings were retrieved on January 25, 2012, and secured in Detective Hunt's office. However, the State did not realize it had custody of the shell casings until March 5, 2012.

As of the hearing, Defendant had not had the opportunity to view and inspect the shell casings or the deceased's vehicle or have them examined by their own experts.

This case has been continued multiple times: in January 2011; in April 2011; in June 2011, twice; in September 2011; and in February 2012.

CONCLUSIONS OF LAW

Defendant's Motion to Suppress

In *State v. Osakalumi*, 194 W.Va. 758, 461 S.E. 2d. 504 (1995) the West Virginia Supreme Court found fundamental fairness requires the Court to evaluate the State's failure to preserve potentially exculpatory evidence in the context of the entire record.

In *State v. Osakalumi*, 194 W.Va. 758, 461 S.E. 2d. 504 (1995) the West Virginia Supreme Court determined the proper course of action when discoverable evidence is properly sought by the defendant, but the evidence is unavailable at the time defendant makes his request. Syllabus Point 2 of *Osakalumi*, holds:

When the State had or should have had evidence requested by a criminal defendant but the evidence no longer exists when the defendant seeks its production, a trial court must determine (1) whether the requested material, if in the possession of the State at the time of the defendant's request for it, would have been subject to disclosure under either West Virginia Rule of Criminal Procedure 16 or case law; (2) whether the State had a duty to preserve the material; and (3) if the State did have a duty to preserve the material, whether the duty was breached and what consequences should flow from the breach. In determining what consequences should flow from the State's breach of its duty to preserve evidence, a trial court should consider (1) the degree of negligence or bad faith involved; (2) the importance of the missing evidence considering the probative value and reliability of secondary or substitute evidence that remains available; and (3) the sufficiency of the other evidence produced at the trial to sustain the conviction. (Emphasis added).

In Osakalumi, the West Virginia Supreme Court found that as a matter of constitutional law, fundamental fairness requires courts to evaluate the State's failure to preserve potentially exculpatory evidence in the context of the entire record. Id. at 765. The facts in Osakalumi are similar to those in Defendant's matter. In Osakalumi, the defendant was charged with first degree murder. The State's case at trial hinged on the medical examiner's conclusion of homicide based on a police officer's determination of the trajectory of the bullet that killed the deceased. The trajectory determination was, in turn, based on the location and path of the bullet through a couch located at the scene. Id. at 761. Yet, the defendant never had the opportunity to independently examine the couch. The State "breached its duty to preserve evidence in this case in that it destroyed the couch, failed to take measurements of it and, further, to properly photograph it." Id. at 767.

The West Virginia Supreme Court found that Osakalumi's due process rights were violated when the trial court permitted the State to introduce evidence from the couch that the appellant had no opportunity to examine, and which was destroyed prior to trial. Noting this

evidence was crucial in the determination that the manner of death was a homicide, rather than suicide, the Court held the evidence regarding the couch should have been suppressed: “We hold that the appellant’s trial was so fundamentally unfair as a result of the admission of evidence regarding the destroyed couch that the appellant is entitled to a new trial.” *Id.* at 768.

In the instant case, Defendant made repeated requests to view the discovery for over a year, only to be told that the shell casings were lost in January 2012. Then, three days before the scheduled pre-trial on March 8, 2012, the State not only informed Defendant the shell casings were available for viewing, but the shell casings were found in the State’s custody and had been at the West Virginia State Police Lab for approximately one year—a large portion of the time period in which Defendant made his requests to view the evidence.

Based upon review of the record, testimony of Detective Hunt and proffers of counsel, this Court FINDS the shell casings recovered at the scene are relevant evidence and material to the prosecution and defense of this matter. The Court FINDS that (1) the shell casings were subject to disclosure under West Virginia Rule of Criminal Procedure 16, (2) the State had a duty to preserve the material; (3) and the State breached that duty.

Trial in this matter is currently scheduled for April 9, 2012. The Court is unwilling to continue this case any further, as it has already been continued multiple times due in part to the State’s difficulty in producing evidence and allowing Defendant time to inspect it. During the pre-trial hearing, Defendant argued that the failure of the State to provide the relevant evidence prior to the week of the pre-trial hearing has denied Defendant of a reasonable opportunity to have the shells examined for potential exculpatory evidence.

This Court agrees and FINDS that the delay and absence of opportunity of Defendant to examine the shell casings deprives Defendant of his right to examine evidence introduced against

him. “An accused’s right to a fair trial and to fair cross-examination of witnesses against him ‘requires that the State be prepared to provide a defendant with a reasonable opportunity to examine adverse evidence presented by the State’s experts.’” *Osakalumi*, 194 W. Va. at 767 (quoting *State v. Thomas*, 187 W. Va. 686, 691-92 (1992)).

The State of West Virginia has had the opportunity to conduct extensive testing on the shell casings. While the State indicates it does not intend to refer to the reports by Dr. Bond and Mr. McRoberts, Defendant should have had the same opportunity to examine the shell casings. Further, the State indicated it did intend to refer to the report by the West Virginia State Police Lab. Defendant has had no similar opportunity to test the shell casings.

Following oral argument and upon further examination of the record herein, the Court FINDS that sufficient evidence has been established for this court to CONCLUDE that the Charleston Police Department and/or the Kanawha County Prosecutor’s office either intentionally withheld the shell casing evidence, based significantly on testimony from Detective Hunt, wherein he states that the Kanawha County Prosecuting Attorney’s office called and directed him to send the shell casings to the crime lab in January, 2011. It was not until January, 2012 that the Prosecuting Attorney advised that the evidence was even missing and did not advise defense counsel or the court that it was even at the crime lab. It was only days before the pretrial hearing in March, 2011 that the information was disclosed to the court or the defendant’s attorney. Accordingly, the Court finds that the intentional or grossly negligent failure to timely disclose said evidence to the Defendant for inspection was unreasonable and prejudicial to the Defendant.

The Court further FINDS that the State' failure to make reasonable inquiry to verify the whereabouts and status of said evidence, and further failure to timely disclose to Defendant that said evidence was missing and/or lost was inexcusable and amounted to gross negligence.

The Court further FINDS the State negligent in their failure to preserve the evidence and their failure to account for the shell casings when Defendant requested them.

Accordingly, the Court ORDERS that pursuant to the West Virginia Supreme Court's ruling in *Osakalumi*, and in the court's discretion, that the shell casings recovered at the scene of the July 4, 2010 shooting are EXCLUDED. The State of West Virginia is instructed to refrain from mentioning or eliciting testimony at trial regarding the shell casings, and to instruct any and all witnesses to refrain from testimony regarding the shell casings.

Defendant's Motion in Limine to Exclude Evidence Regarding
Ammunition, Weapons and Firearms Seized by Law Enforcement

Defendant also argued that any evidence regarding firearms seized by law enforcement that is not directly related to or matching evidence found at the scene of the crime is inadmissible as it is not relevant. Rule 401 of the West Virginia Rules of Evidence defines relevant evidence. "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Pursuant to Rule 402, "(e)vidence which is not relevant is not admissible."

In *State v. Walker*, 188 W. Va. 661 (1992) the West Virginia Supreme Court ruled that the trial court erred in admitting evidence regarding the defendant's firearms and ammunition as such evidence was not relevant. The State introduced evidence about a .357

magnum revolver, brass cartridge casings, ammunition, and other firearm accessories that were found in the defendant's house at the time of arrest. *Id.* at 668. The evidence introduced at trial clearly established that the only small caliber ammunition found in the possession of the defendant did not match the bullet found in the victim. *Id.* In ruling the evidence inadmissible, the West Virginia Supreme Court found that "(t)he only purpose of such testimony was to create the impermissible inference that Mr. Walker must be a dangerous person solely because he possessed guns and ammunition, notwithstanding that the right to keep and use arms is guaranteed to every citizen by W.Va. Const. Art. III 22." *Id.*

Upon inquiry by the Court, the State conceded, in light of court's ruling to exclude shell casings, that there is no independent evidence that any of the ammunition, firearms or weapons seized by law enforcement are directly related to or that match evidence found at the scene of the crime, or that links the Defendant to the incident at issue.

Accordingly, in order to prevent an impermissible inference that Defendant is a dangerous person or for the jury to draw unreliable inferences if reference to shell casings is allowed, particularly when no independent physical evidence exists to corroborate the same (i.e. lack of gun or other weapon), the Court ORDERS that any evidence regarding firearms, ammunition, or other weapons seized by law enforcement which are not directly related to, or matching evidence found at the scene are hereby EXCLUDED. To underscore the court's ruling, it points out that the ruling regarding the ammunition seized from the defendant's mother's home analyzes the same under W.Va Rules of Evidence 401 and 403. The State admits that without the shell casings, the evidence obtained at the mother's residence is not probative, or at least acknowledges that any probative value is substantially outweighed by the prejudice to the defendant. The court also mentions that the State has not alleged that any of the guns found in

the subject residence were illegal or that any evidence was discovered there that connects the defendant to the death of the decedent.

Defendant's Motion for Supplemental Discovery

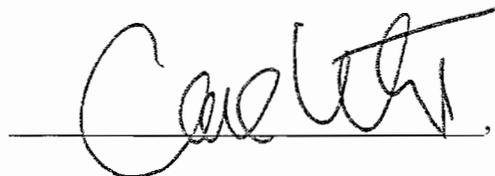
Upon receipt of a motion from Defendant the State is ORDERED to provide to Defendant a copy of the police report attached to Charleston Police Citation #260808. The Court further ORDERS that the State of West Virginia shall make diligent inquiry regarding existence of any additional discovery related to the instant case and to immediately disclose and provide same to the Defendant, including any and all video and audio recordings of witnesses.

The Court ORDERS that Defendant's Motion to Exclude Identification of Vehicle by State's Witness, and Defendant's Motion to Exclude Testimony regarding the Vehicle of the Deceased SHALL be held in abeyance, and if necessary, an in-camera hearing shall be held to determine the admissibility of the evidence.

The Court notes and preserves the objection and exception of the State of West Virginia to any of the court's rulings.

The Clerk is directed to send a copy of this Order to all counsel of record.

ENTERED NUNC PRO TUNC THIS 9th day of ^{March} May, 2012.



CARRIE WEBSTER, JUDGE
Thirteenth Judicial Circuit