

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

IN RE:

State of West Virginia ex rel.  
Scott R. Smith, Prosecuting  
Attorney for Ohio County,  
Petitioner,

Vs

Docket No. 20-1028

The Honorable Michael J. Olejasz,  
Judge of the Circuit Court of  
Ohio County, and Danny Ivan Mendoza,  
Respondents.

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**SUMMARY RESPONSE OF THE  
RESPONDENT/DEFENDANT**

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**SUMMARY RESPONSE BY THE RESPONDENT/DEFENDANT,  
DANNY IVAN MENDOZA**

Now comes the Respondent/Defendant, Danny Ivan Mendoza, by and through his counsel, Kevin L. Neiswonger, Esq. and the Law Office of Neiswonger and White, and Michael Baum, Esq. and provides the following Summary Response as it relates to the Petitioner's Petition for Writ of Prohibition in the above referenced matter.

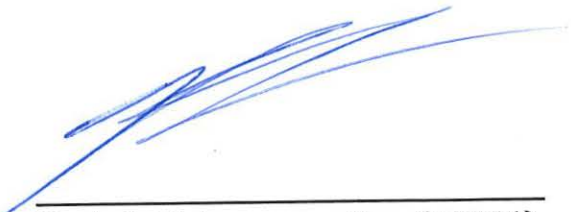
The Respondent/Defendant states as follows:

1. Danny Ivan Mendoza was, in fact, indicted by an Ohio County Grand Jury on July 8, 2020 for First Degree Murder. The Respondent/Defendant, was, in fact, arraigned on July 23, 2020.
2. On August 31, 2020, the Respondent/Defendant, moved to continue the trial that had not yet been scheduled for the term.
3. On August 31, 2020, a hearing was held in this matter; wherein, Mendoza requested a continuance of the trial. Mendoza, did, in fact, waive his right to a speedy trial and waived his right to a trial within that "term" of Court.
4. The next trial was scheduled to begin on January 4, 2021.
5. The State did file a Motion on December 18, 2020 and requested a

continuance of the hearing because it did not yet receive an autopsy report from the medical examiner's office.

6. At that hearing, Mendoza and his counsel took "no position" in regard to the State's request for a continuance. Mendoza did not object, but also did **not** join in on the request to continue the matter.
7. The Respondent/Defendant took no position in regard to the State's Motion for a Continuance and continues to take no position in that regard. The Respondent/Defendant does acknowledge that he did, in fact, waive his right to a trial during the **first** term of Court in which he was indicted. The Respondent/Defendant takes no position as to whether or not such a waiver constitutes a waiver of subsequent additional terms of Court.
8. Nonetheless, the Respondent/Defendant had an agreement with the State of West Virginia to take no position in this matter, and by virtue of the filing of this Response, the Respondent/Defendant continues to fulfil his agreement with the State of West Virginia in taking no position thereto.

**Respectfully submitted,**



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CERTIFICATE OF SERVICE

I, Kevin L. Neiswonger, Esq., Counsel do hereby certify that the foregoing  
**Summary Response of Respondent/Defendant, Danny Ivan Mendoza** was  
served as follows:

Type of Service: Facsimile

Person(s) Served: Shawn Turak, Esq.  
Assistant Prosecuting Attorney  
Ohio County Prosecuting Attorney's Office  
Wheeling, WV 26003  
FAX: 304-243-3870

Date of Service: December 30, 2020

By Counsel:

  
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