

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff,

v.

CHANDIS WESLEY LINKINOGGER
Defendant.

Case No. 21-F-4 MJO

ORDER



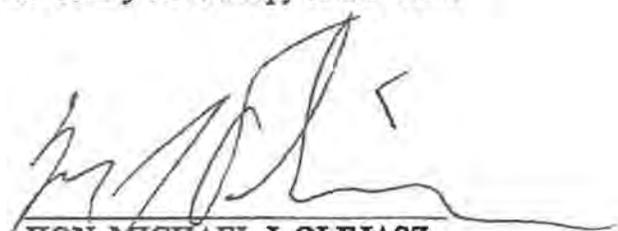
WHEREFORE, per the Court's Scheduling Order, entered on January 21, 2021, the trial in this matter began on April 12, 2021. The first day of trial consisted exclusively of seating a jury. At the beginning of the second day of trial, April 13, 2021, the Defendant brought forth an oral *Motion to Dismiss* all four (4) Counts contained within the Indictment, including Count One (1), Strangulation; Count Two (2), Burglary; Count Three (3), Sexual Assault in the Second Degree; and Count Four (4), Sexual Assault in the Second Degree. Hence, Defendant asserts the State is in violation of multiple Court Orders by neglecting to produce DNA test results from evidence sent to the West Virginia State Police Laboratory upon retrieval by the State's investigators, early on in this litigation. Importantly, the Court's Scheduling Order requires that these DNA lab test results be produced no later than February 4, 2021. However, at a hearing held on March 12, 2021 regarding Defendant's motion to compel, over a month after the Court Ordered discovery deadline, the State had still not produced the lab test results. Still, via Court Order entered on March 17, 2021, the Court determined it reasonable to give the State another opportunity to produce the subject test results. Nevertheless, the Court held, "the Court does ORDER that the West Virginia State Police Laboratory produce the results as soon as possible, but no later than April 3, 2021". Thus, not only did the State violate the discovery deadline set forth in this Court's Scheduling Order, it also violated the Court's Order to produce the lab test results by April 3, 2021. Finally,

through Defendant's Motion to Dismiss, it has been made evident to the Court that the State has still not produced the DNA test results at issue as of the second day of trial.

Consequently, because the State violated two Court Orders by not producing evidence crucial to the resolution of this case, this Court has determined good cause exists to GRANT Defendant's *Motion to Dismiss* and DISMISS, with prejudice, Counts Three (3) and Four (4) of the underlying Indictment. Hence, in conjunction with that ruling, the Court declared a mistrial due to the jury hearing the substance of Counts Three (3) and Four (4) on the previous day of trial. If the Court had proceeded, it would have been manifestly unjust to the Defendant to continue with that jury. Moreover, had the Court determined to allow the State to proceed on Counts Three (3) and Four (4), it would have been inviting reversible error due to the State's failure to produce the relevant evidence. However, at this time, the Court is not dismissing Counts One (1) and Two (2) of the Indictment, although it would revisit the request to dismiss Count one (1), if the Defendant could later show that it too was so intertwined with the allegations of sexual assault in Counts Three (3) and Four (4) that the State's failure to produce the subject evidence was directly relevant to that charge as well.

It is further ORDERED that the Circuit Clerk of Ohio County serve a copy of this Order upon counsel of record.

ENTERED this 22nd day of April 2021.


HON. MICHAEL J. OLEJASZ
First Judicial Circuit Court Judge

A copy Teste:


Brenda X. Miller
Circuit Clerk