APPENDIX E

The Order of the Court is stated below:
Dated: February 29, 2024 11:44:03 AM /s/ John A. Pearce Justice

IN THE SUPREME COURT OF THE STATE OF UTAH

---ooOoo---

SANDY CITY, Respondent, v. AMANDA REYNOLDS, Petitioner.	ORDER Supreme Court No. 20231080-SC Court of Appeals No. 20230825-CA Trial Court No. 225400013

---ooOoo---

This matter is before the Court upon a Petition for Writ of Certiorari, filed on December 6, 2023.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari is denied.

End of Order - Signature at the Top of the First Page

APPENDIX D

IN THE UTAH COURT OF APPEALS

SANDY CITY, Appellee, *v.* AMANDA REYNOLDS, Appellant.	ORDER OF SUMMARY DISMISSAL Case No. 20230825-CA

Before Judges Mortensen, Tenney and Luthy.

Amanda Reynolds appeals the district court's order granting in part and denying in part her motion to dismiss charges against her. This matter is before the court on its own motion for summary disposition on the basis that this court lacks jurisdiction because the underlying case originated in justice court.

"The decision of the district court [in a case originating in a justice court] is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance." Utah Code § 78A-7-118(11). Accordingly, if the district court does not rule on the constitutionality of a statute or ordinance, "the decision of the district court is final and this court has no jurisdiction to hear an appeal thereof." *State v. Hinson*, 966 P.2d 273, 277 (Utah Ct. App. 1998).

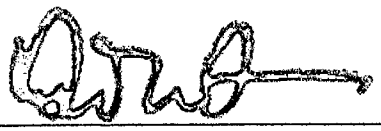
Reynolds argues that this court has jurisdiction over her appeal because the district court rejected her challenge to the constitutionality of Utah's implied consent statute. However, the district court did not rule on the constitutionality of the statute. Rather, it determined that Reynolds lacked standing to challenge the constitutionality of the statute because she was not charged with a violation of the statute and did not give her consent to testing.

Because the district court did not rule on the implied consent statute's constitutionality, we lack jurisdiction over this appeal. When a court lacks jurisdiction, it "retains only the authority to dismiss the action." *Varian-Eimac, Inc. v. Lamoreaux*, 767 P.2d 569, 570 (Utah Ct. App. 1989).

IT IS HEREBY ORDERED that the appeal is dismissed.

Dated this 27th day of November, 2023.

FOR THE COURT:



David N. Mortensen, Judge

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2023, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

AMANDA REYNOLDS
amandasreynolds@gmail.com

DOUGLAS A. JOHNSON
sandypros@sandy.utah.gov

THIRD DISTRICT, WEST JORDAN
ATTN: STEPHANIE SHERIFF/ALYSON SLACK
stephs@utcourts.gov; alysons@utcourts.gov

By E. Gilmore
Emily Gilmore
Judicial Assistant

Case No. 20230825-CA
THIRD DISTRICT, WEST JORDAN, 225400013

The Order of the Court is stated below:
Dated: March 07, 2024 **At the direction of the Court**
10:44:20 AM

by
/s/ KEHLY GWYNN

IN THE UTAH COURT OF APPEALS

SANDY CITY, Appellee, v. AMANDA REYNOLDS, Appellant.	REMITTITUR Appellate Case No. 20230825-CA THIRD DISTRICT, WEST JORDAN Trial Court Case No.: 225400013

The above-entitled case was submitted to the court for decision and the decision has been issued.

Decision Issued: November 27, 2023

Notice of Remittitur Issued: March 07, 2024

Record: None

End of Order - Signature at the Top of the First Page

APPENDIX B

THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
WEST JORDAN DEPARTMENT

SANDY CITY, Plaintiff, vs. AMANDA REYNOLDS, Defendant.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** Case No. 225400013 Judge James D. Gardner

Before the Court is Defendant Amanda Reynolds's Brady/Giglio Motion to Dismiss & Sanctions (Motion). In the Motion, Defendant seeks to have all three pending charges against her dismissed: Count 1: failure to stay in one lane (infraction); Count 2: speeding (infraction) (together with Count 1, referred to herein as Traffic Infractions); and Count 3: driving under the influence of alcohol and/or drugs (DUI) (class B misdemeanor).[1] Plaintiff Sandy City (City) filed an Objection to the Motion. Defendant then filed a Reply in Support of the Motion. On June 26, 2023, the Court held an evidentiary hearing and heard oral argument from the parties on the Motion. On July 11, 2023, Defendant filed a Request to Submit. The Court, having considered the evidence and the arguments of the parties regarding the issues presented in this case and, for good cause appearing in the record, hereby makes the following Findings of Fact, Conclusions of Law, and Order:

[1] Defendant has filed a number of motions that are pending before the Court (Other Pending Motions) that appear to be directed at the DUI charge. However, the Court believes the Other Pending Motions are moot in light of the fact that Defendant's conviction on the DUI charge is vacated, as set forth below.

FINDINGS OF FACT

1. Defendant was pulled over and arrested on the night of July 3, 2020, on suspicion of drunk driving. The arresting officer (Officer) administered a series of standard field sobriety tests, as well as a preliminary breath test. Officer can arguably be heard saying that Defendant "was high five," (Dkt. 97 at 5; bodycam video), presumably referring to the blood alcohol content (BAC) level detected by the preliminary breath test. Officer then secured a warrant to draw Defendant's blood for testing. The blood test allegedly showed that Defendant had a BAC of approximately .15, or three times the legal limit.

2. Defendant asserts as part of her Motion that she sought to compel production of the blood evidence in the Sandy Justice Court--both the ability to test the blood and evidence related to the chain of custody--but that her motion was denied. The case proceeded to trial in the justice court. At trial, the City's expert witness testified that the blood test showed that Defendant's BAC was over approximately three times the legal limit. One of the defenses raised by Defendant at the trial was that the blood that was tested by the City's expert was not her blood. (Dkt. 91 at 64 ("I think you can see through the video that we watched that I was not even remotely that intoxicated. So we know that that blood isn't mine. Now I can't tell you how that blood got mixed up, or what happened, or whether it was mixed up with someone else's in the precinct or whether they just handled it improperly . . . .").) Defendant was convicted by a jury in the justice court of failure to stay in one lane, speeding, and DUI.

3. Defendant timely appealed her convictions to this Court. According to the certified docket, Defendant filed at least two separate notices of appeal: (1) April 25, 2022

Notice of Appeal – Criminal (not Interlocutory) Demand for Trial De Novo; and (2) April 26, 2022 Notice of Appeal (E-mailed 4/26/22).[2]

4. On June 29, 2022, Defendant requested to have the blood independently tested by filing a motion under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972). The Court granted the motion and issued an order requiring the government to release the blood "to an authorized agency . . . for Defendant's independent testing." (Dkt. 103 at 1.) The Order was issued on September 12, 2022.

5. After the Court issued the order, Defendant spoke with a government evidence technician (Technician) about having the blood independently tested. Technician told Defendant that the blood was destroyed on June 30, 2022 (the day after Defendant filed her *Brady/Giglio* motion). The Court finds that, at the time the blood was destroyed, the docket clearly reflected that a notice of appeal in this case had been filed.

6. Defendant subsequently filed the Motion to have all of the charges in the case dismissed as a sanction for the destruction of the evidence. The City then filed its Objection, and Defendant filed her Reply.

7. The due process clause of the Utah Constitution addresses the "rights of criminal defendants when evidence has been lost or destroyed." *See State v. DeJesus*, 2017 UT 22, ¶ 1, 395 P.3d 111. To establish a due process violation in such cases, a defendant must first make a threshold showing of "a reasonable probability that the lost evidence would have been exculpatory[.]" *Id.* ¶ 27. To make the threshold showing, "a defendant must make some proffer

[2] Defendant argued that she actually filed three notices of appeal. For the purposes of this order, however, it does not matter whether she filed two or three notices of appeal. The Court finds that a review of the docket clearly shows that Defendant filed a notice of appeal.

as to the lost evidence and its claimed benefit." *Id.* ¶ 39. Assuming that the defendant's "proffer is not pure speculation or wholly incredible," it will be enough to make the threshold showing. *Id.*

8. If the defendant makes the threshold showing, the court must then "balance the culpability of the State and the prejudice to the defendant in order to gauge the seriousness of the due process violation and to determine an appropriate remedy." *Id.* ¶ 27. Specifically, the court must assess "(1) the reason for the destruction or loss of the evidence, including the degree of negligence or culpability on the part of the State; and (2) the degree of prejudice to the defendant in light of the materiality and importance of the missing evidence in the context of the case as a whole, including the strength of the remaining evidence." *Id.* ¶ 26 (quoting *State v. Tiedemann*, 2007 UT 49, ¶ 43, 162 P.3d 1106). Finally, "[t]he touchstone for the balancing process is fundamental fairness. . . . If prejudice to the defendant . . . is extreme, fairness may require sanction even where there is no wrongdoing on the part of the State." *Tiedemann*, 2007 UT 49, ¶ 45.[3]

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[3] Before *DeJesus* was decided, the Utah Supreme Court had previously

> identified several factors under rule 16 [of the Utah Rules of Criminal Procedure] to guide a trial court's decision on a motion to exclude prosecution evidence because of a failure to fully disclose. These factors are also relevant to a motion, like the one here, to dismiss charges for destruction of evidence. The nonexclusive factors we consider under rule 16 are (1) the extent to which the prosecution's representation [of the existing evidence] is actually inaccurate, (2) the tendency of the omission or misstatement to lead defense counsel into tactics or strategy that could prejudice the outcome, (3) the culpability of the prosecutor in omitting pertinent information or misstating the facts, and (4) the extent to which appropriate defense investigation would have discovered the omitted or misstated evidence.

Tiedemann, 2007 UT 49, ¶ 41 (second alteration in original) (citing and quoting *State v. Kallin*, 877 P.2d 138, 143 (Utah 1994)). In *DeJesus*, however, the court clarified that "[r]ule 16 . . . does not govern cases of lost or destroyed evidence. It merely provides a helpful framework for applying the *Tiedemann* test. Without question, we planted the *Tiedemann* test in constitutional soil." 2017 UT 22, ¶ 32; *see also id.* ¶

9. The City asserts that, "[i]n the present case, there has been no showing, other than stock assertions, the blood evidence would be exculpatory." (Objection at 4.)

10. The Court disagrees with the City's argument.

11. Defendant notes Defendant's arguments regarding apparent inconsistency of the high level of BAC from the blood test in contrast to the video evidence of the field sobriety tests and the apparent results of the preliminary breath test. Defendant argued at trial in the justice court that the video evidence showed that she was not intoxicated at three times the legal limit, which, in turn, would support her argument that it was not her blood that was tested. Furthermore, Defendant questioned Officer at trial in the justice court about the chain of custody of the blood, including whether he had properly timely labeled the envelope holding the blood. Finally, Officer can arguably be heard saying that Defendant tested a "high five" on the preliminary test, which could lead to a reasonable inference that Defendant's BAC level was somewhere between .055 and .06. The blood test, which was taken *after* the preliminary test, recorded a BAC level of .15. This proffer by the Defendant as to the lost evidence and the claimed benefit are enough to make a threshold showing of "a reasonable probability that the lost evidence would have been exculpatory." *See DeJesus*, 2017 UT 22, ¶ 27. However, Defendant has only met her burden as to the DUI charge, not as to the Traffic Infractions. In other words, Defendant has failed to make a threshold showing that the lost blood evidence would be exculpatory as to the Traffic Infractions.

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27 ("So, contrary to Ms. DeJesus's argument, the due process analysis we articulated in *Tiedemann* is not a wide-ranging balancing test that encompasses all of the factors applicable to rule 16—most of which would be difficult if not impossible to directly apply to cases involving lost evidence."). Nonetheless, to the extent that those factors are applicable to Defendant's case, the Court considers them below.

12. Having found Defendant has met her burden of making a threshold showing of a reasonable probability that the blood evidence would have been exculpatory as to the DUI charge, the Court must next balance the degree of culpability or negligence of the State and the prejudice to Defendant. This balancing leads the Court to conclude that Defendant's conviction as to the DUI charge must be vacated and that the DUI charge against her must be dismissed with prejudice.

13. Despite her arguments to the contrary, Defendant has not pointed to any credible evidence suggesting that the City destroyed the blood in bad faith.[4]

14. However, there is ample evidence that the City was negligent in destroying the blood.

15. Technician testified that she did not need to notify anyone of the destruction of the evidence because the case involved only misdemeanor charges.[5] She also testified that she had reviewed the docket in the justice court case and that she did not see that a notice of appeal had been filed. As noted above, the docket clearly reflects that a notice of appeal had been filed in this case when the blood was destroyed.[6] The Court finds a high degree of negligence on the

[4] To be clear, the Court does not find that the government—including the City, the prosecuting attorneys, Technician, and Officer—acted in bad faith during the course of this case.

[5] Technician testified that the process is different when there are felony charges. Specifically, she would need to obtain approval from the prosecuting attorney before destroying evidence. This discrepancy strikes the Court as unfair.

[6] In fact, it is clear that at least two notices of appeal had been filed and the justice court had entered a "Ruling Entry" dealing with staying incarceration pending appeal.

part of the government in allowing the destruction of the blood, given the notations on the docket.[7]

16. Moreover, the Court finds that Defendant is prejudiced by the destruction of the evidence as it relates to the DUI charge. The transcript of the justice court jury trial makes clear that the blood test results played a key role in the case. (*See* Dkt. 91 at 43-54 (testimony of the City's toxicology expert witness).) And one of Defendant's main defenses in this case is that the blood tested was not her blood. Now that Defendant cannot have the blood independently tested, she would not have the opportunity to meaningfully dispute a key part of the City's case against her at a new trial.

17. This fact weighs strongly against allowing the City to retry Defendant on the DUI charge. *See DeJesus*, 2017 UT 22, ¶ 54 ("[G]iven the indisputably central role a video recording of the incident would play, we cannot say that the loss of the evidence had only a negligible impact on Ms. DeJesus's right to a fundamentally fair trial.").[8]

18. Based on the foregoing, the Court concludes that the DUI charge should be dismissed because (a) the City was negligent in destroying the blood and (b) Defendant was

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[7] It bears noting again, however, that the Court finds Technician's testimony credible that she did not destroy the evidence in bad faith.

[8] The Court is not persuaded by the City's argument that "Defendant had over a year to have the blood tested in prior proceedings and refused to have the testing done." (*See* Objection at 4). For one thing, counsel for the City conceded at the June 26, 2023 hearing that he did not know whether Defendant moved the justice court to order the release of the blood sample for independent testing. Therefore, Defendant has offered unrebutted testimony that she filed a motion to compel the City to disclose the blood for testing and that the justice court denied the motion. Moreover, Technician testified that Defendant contacted the government about having the blood independently tested in October 2021. Technician testified that she told Defendant that she needed to get a court order and pay a fee to have the blood transferred to a third party for independent testing.

APPENDIX C

IN THE UTAH COURT OF APPEALS

SANDY CITY, Plaintiff and Appellee, *v.* AMANDA REYNOLDS, Defendant and Appellant.	ORDER OF SUMMARY DISMISSAL Case No. 20220946-CA

Before Judges Christiansen Forster, Mortensen, and Luthy.

Amanda Reynolds seeks to appeal the district court's order ruling on various pre-trial motions. This matter is before the court on its own motion for summary disposition based on lack of jurisdiction due to the absence of a final appealable order.

Generally, appeals may be taken only from final orders. *See* Utah R. App. P. 3; *Bradbury v. Valencia*, 2000 UT 50, ¶ 9. "To be final, the trial court's order or judgment must dispose of all parties and claims to an action." *Bradbury*, 2000 UT 50, ¶ 10. In a criminal case, the sentence is the final order from which an appeal may be taken. *State v. Bowers*, 2002 UT 100,¶ 4. In the instant case, the district court ruled on pre-trial motions but the trial remains pending. Accordingly, there is no final order from which to appeal. *Id.* Because there is no final appealable order, this court lacks jurisdiction and must dismiss the appeal. *Bradbury*, 2000 UT 50, ¶ 8.

IT IS HEREBY ORDERED that this appeal is dismissed.

Dated this 12th day of December, 2022.

FOR THE COURT:

Michele M. Christiansen Forster, Judge

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2022, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

AMANDA REYNOLDS
amandasreynolds@gmail.com

DOUGLAS A. JOHNSON
sandypros@sandy.utah.gov

THIRD DISTRICT, WEST JORDAN
ATTN: STEPHANIE SHERIFF/ALYSON SLACK
stephs@utcourts.gov; alysons@utcourts.gov

By E. Gilmore
Emily Gilmore
Judicial Assistant

Case No. 20220946-CA
THIRD DISTRICT, WEST JORDAN, 225400013

Additional material from this filing is available in the Clerk's Office.