

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

COOS, SS.

Docket No. 214-2024-CR-237

State of New Hampshire

v.

Courtney McLain

and

Docket No. 214-2024-CR-238

State of New Hampshire

v.

Melinda Ann Kennett

MISTRIAL ORDER

After hearing from counsel for the parties, and having considered and found wanting all feasible and less drastic alternatives and rejecting the same, the court declares a mistrial without prejudice as to all charges and as to each defendant on the defendants' oral motion finding that manifest necessity requires the same in that the ends of public justice would be defeated under the circumstances by letting these cases go forward to verdicts. *See State v. King*, 131 N.H. 173, 177 (1988). "A mistrial is appropriate when the circumstances indicate that justice may not be done if the trial continues to a verdict." *State v. Turcotte*, 173 N.H. 401, 402 (2020)(citation omitted). The defendants' oral motion to dismiss the charges is denied.

This order is issued for the reasons set forth by the defendant and those

articulated by the court on the record. *See* record. The defendants' motion was made immediately after testimony by the State's primary investigating police officer during which he impermissibly made explicit reference to becoming aware of certain incriminating evidence for the first time during the defendants' prior criminal trial in these cases in the circuit court. That trial resulted in guilty verdicts against both defendants. "It is well-settled that an incurable prejudice may result when the testimony of a witness conveys to a jury the fact of a defendant's prior criminal offense. The infusion of such evidence into a trial is probably only equalled by a confession in its prejudicial impact upon a jury." *State v. Pierce*, 176 N.H. 487, 491 (2024) (quoting *State v. Kerwin*, 144 N.H.357, 360 (1999)).

Although the witness did not explicitly testify that the defendants had been previously convicted of the same charges now before the jury in this court, the court holds, nevertheless, that the offending testimony was "not merely improper, but also so prejudicial that it constitutes an irreparable injustice that cannot be cured by jury instructions" (quoting *State v. Hearn*, 151 N.H. 226, 232 (2004)) as the jury could reasonably have inferred from the testimony that the State had charged and convicted the defendants previously. The court finds that the probability that the jury would draw such an inference from the witness' testimony to be unacceptably high given his role as the State's lead investigator in these cases and the prior evidence presented that each defendant's privileges to access the New Hampshire Department of Safety's computer system had been revoke and suspended for significant periods following contested administrative adjudications.

The foregoing findings notwithstanding, the evidence is persuasive that the State did not intentionally elicit the inadmissible testimony from the witness or

otherwise seek to provoke the defendant's mistrial motion. As such, these cases shall be returned to the docket once again for jury selection and trial, as the docket permits.

The jury is discharged. The court's existing bail orders shall continue in effect without modification.

SO ORDERED, this 6th day of November 2025.


Lawrence A. MacLeod, Jr.
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 11/06/2025