

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT**

STATE OF NEW MEXICO,

Plaintiff,

v.

D-101-CR-2023-00040

HANNAH GUTIERREZ-REED,

Defendant.

**ORDER DENYING DEFENDANT'S MOTION TO DISMISS FIRST AMENDED
INFORMATION, AND SUPPLEMENT TO MOTION TO DISMISS SECOND
AMENDED INFORMATION AND MOTION TO DISMISS THIRD AMENDED
INFORMATION**

This Order addresses the issues raised in three different motion packets: 1) Motion to Dismiss First Amended Information; Response to Motion to Dismiss First Amended Information; and, Reply to Response to Motion to Dismiss First Amended Information; 2) Supplement to Motion to Dismiss Second Amended Information and Motion to Dismiss Third Amended Information; 3) Expedited Motion to Strike Defendant's "Supplement to Motion to Dismiss Second Amended Information and Motion to Dismiss Third Amended Information"; and, Response to Expedited Motion to Strike Defendant's "Supplement to Motion to Dismiss Second Amended Information and Motion to Dismiss Third Amended Information."

The Motion to Dismiss First Amended Information contained five primary issues: 1) whether the prosecutor lacked authority so that this court lacks jurisdiction over the current case; 2) whether extra judicial statements made by the prosecution tainted the jury pool or resulted in prejudice violating Defendant Gutierrez's right to due process; 3) whether evidentiary issues, including discovery violations, violated Defendant Gutierrez's right to due process; 4) whether Defendant Gutierrez's prosecution was a selective prosecution in contravention of the equal

protection clause; and, 5) whether the State engaged in prosecutorial misconduct, due to preaccusation delay, requiring dismissal of the charges.

The Supplement to Motion to Dismiss Second Amended Information and Motion to Dismiss Third Amended Information focused on the authority of the new prosecution team to submit amended criminal information due to the alleged jurisdictional issue based on the former prosecutor's authority to prosecute.

I. Whether the Former Prosecutor Lacked Authority to Prosecute the Current Case.

1. The Defendant's argument that the former prosecutor, Carmack-Altwies, lacked authority was based on "Order on Defendant's Brief Addressing District Attorney's Power to Continue as Co-Prosecutor after Appointment of Special Prosecutor," filed on April 21, 2023.
2. The Order was prepared by defense counsel Jason Bowles, approved as to form by former prosecutor Carmack-Altwies, and signed by the Court.
3. The Court has amended the written Order because it misstated the Court's oral ruling at the hearing held on March 27, 2023.
4. The amended order does not comment on former prosecutor Carmack-Altwies' authority prior to the March 27, 2023 hearing.
5. Therefore, this Court denies Defendant's motion to dismiss the first, second, and third amended information based on a lack of prosecutorial authority.
6. Additionally, the Court holds that the Third Amended Criminal Information filed by the new prosecution team, Jason Lewis and Kari Morrissey, supersedes the First Amended Criminal Information and cures the alleged defects presented by the Defendant.

II. Whether Media Statements Made by the Prosecution Tainted the Jury Pool or Resulted in Prejudice Violating Defendant Gutierrez's Right to Due Process.

1. The *Silver* court remarked that dismissal of an indictment before *voir dire* is an extreme remedy. See *United States v. Silver*, 103 F. Supp. 370, 380 (S.D.N.Y. 2015) (citing *United States v. Curcio*, 712 F.2d 1532, 1544 (2nd Cir. 1983)) (“[E]ven publicity partly engendered by the Government would not warrant the extreme remedy of dismissal of an indictment before a *voir dire*.”).

2. The *Silver* court reasoned that “dismissal might be appropriate in instances where the defendant can show a history of prosecutorial misconduct, spanning several cases, that is so systematic and pervasive as to raise a substantial and serious question about the fundamental fairness of the process which resulted in the indictment.” *Id.* at 381 (internal citation and quotation marks omitted).

3. The Defendant has not demonstrated any prejudice that does not amount to speculation. Nor does she provide any evidence that the jury pool has actually been tainted by the media coverage the case has received.

4. Therefore, the Court denies Defendant's motion to dismiss the first, second, and third amended information based on prosecutorial misconduct via statements to the media.

III. Whether Evidentiary Issues Violated Defendant Gutierrez's Right to Due Process.

1. In *State v. Ayon*, the New Mexico Court of Appeals considered whether “under Rule 5-302 NMRA, which governs preliminary hearings, the district court is authorized to exclude illegally obtained evidence.” 2022-NMCA-003, ¶ 6, 503 P.3d 405.

2. The Court of Appeals reasoned that “the plain language of Rule 5-302 contains no authorization for the district court to consider whether evidence was illegally obtained at a preliminary hearing.” *Id.* ¶ 9.

3. The *Ayon* court compared the purpose of grand jury proceedings with the purposes of preliminary examinations and reasoned that “our Supreme Court has consistently honored a strong policy of resisting dismissal of otherwise valid grand jury indictments based on disputes about the source or trial admissibility of the evidence considered by the grand jury.” *Id.* ¶ 10.

4. The *Ayon* court extended this policy to preliminary examinations due to their similar purpose and to avoid a situation that causes counsel to favor one procedure over another. *Id.* ¶ 11.

5. The Defendant’s arguments regarding the search warrants, allegedly destroyed or unpreserved evidence, and allegedly withheld evidence, targets the legality and admissibility of evidence to be offered at the preliminary examination.

6. Therefore, the Court declines to rule on those arguments prior to the preliminary examination in accordance with the Court of Appeals’ decision in *State v. Ayon*.

IV. Whether Defendant Gutierrez’s Prosecution was a Selective Prosecution in Contravention of the Equal Protection Clause.

1. “To establish a claim of selective prosecution, a defendant must prove both a discriminatory effect and a discriminatory purpose.” *State v. Villas*, 2002-NMCA-104, ¶ 16, 132 N.M. 741.

2. In order “to establish a discriminatory effect, the defendant must prove that he or she was singled out for prosecution while others similarly situated were not.” *Id.*

3. To show a “discriminatory purpose, a defendant must prove that he or she was selected for prosecution based on intentional, purposeful discrimination stemming from impermissible considerations, such as race, religion, or the exercise of a constitutionally protected right.” *Id.*

4. Defendant Gutierrez has not identified an “invidious reason” for the State’s choice to pursue charges against Defendant Gutierrez.

5. The “discriminatory purpose” identified by the Defendant is the former prosecution team’s personal political interests in the prosecution of Alec Baldwin, due to his celebrity status. [5-18-23 Mot. 19]

6. The Defendant does not provide any precedent showing that a selective prosecution claim can be based on something other than an “unjustifiable standard such as race, religion, or other arbitrary classification, including the exercise of protected statutory and constitutional rights.” *Wayte v. United States*, 470 U.S. 598, 608 (1985) (internal quotation marks omitted).

7. Additionally, Defendant’s selective prosecution claim is based on the celebrity status of former defendant Alec Baldwin, and not a classification or characteristic belonging to Defendant Gutierrez. [5-18-23 Mot. 19-20]

8. Therefore, the Court denies dismissal of the first, second, and third amended information based on Defendant’s selective prosecution claim.

V. Whether the Prosecution Engaged in Prosecutorial Misconduct Via Preaccusation Delay.

1. The Court applies a “two-prong test requiring a defendant to prove prejudice and an intentional delay by the state to gain a tactical advantage.” *Gonzales v. State*, 1991-NMSC-015, ¶ 6, 111 N.M. 363.
2. To establish prejudice the defendant must “must establish prejudice by more than mere conjecture: vague and conclusory allegations of prejudice resulting from the passage of time. . .” *State v. Fierro*, 2014-NMCA-004, ¶ 28, 315 P.3d 319.
3. “[D]efendant must be able to show definite and not speculative prejudice, and in what specific manner missing witnesses would have aided his defense.” *Id.* “The prejudice must be more than nominal: it does not have to rise to the level of severe prejudice, but must establish that the prejudice impacted the defense.” *Id.*
4. The Defendant argues that media attention was used to “achieve maximum effect with a national audience and the potential jury pool in New Mexico.” [5-18-23 Mot. 25]
5. However, the usage of the term “potential” reveals the speculative nature of the prejudice that the Defendant alleges.
6. The Defendant has presented no evidence that the jury pool has actually been tainted by the media coverage surrounding this case.
7. Therefore, the Court denies the motion to dismiss the first, second, and third amended information based on the Defendant’s preaccusation delay claim.

CONCLUSION

1. Defendant’s motion to dismiss the first, second, and third amended information based on a lack of prosecutorial authority is DENIED.

2. Defendant's motion to dismiss the first, second, and third amended information based on prosecutorial misconduct via statements to the media is DENIED.

3. The Court declines to rule on arguments regarding the search warrants, allegedly destroyed or unpreserved evidence, and allegedly withheld evidence, which target the legality and admissibility of evidence, prior to the preliminary examination.

4. Defendant's motion to dismiss the first, second, and third amended information based on selective prosecution is DENIED.

5. Defendant's motion to dismiss the first, second, and third amended information based on preaccusation delay is DENIED.

6. Because Defendant has not shown the need for relief based any of on the above theorizes, her request for relief based on cumulative error is also DENIED.

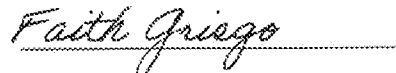
7. This order dispenses of the issues raised in the Motion to Dismiss First Amended Information, and, Supplement to Motion to Dismiss Second Amended Information and Motion to Dismiss Third Amended Information.

8. Therefore, the State's Motion to Strike the Supplement to Motion to Dismiss Second Amended Information and Motion to Dismiss Third Amended Information is hereby DENIED as moot.


MARY MARLOWE SOMMER
DISTRICT COURT JUDGE

Certificate of Service

I certify that a true copy of this Order was e-filed to counsel of record this 7th day of August, 2023


Faith Grigo