

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

STATE OF NEW MEXICO,

Plaintiff,

v.

No. D-101-CR-2023-00040

HANNAH GUTIERREZ,

Defendant.

**REPLY TO EXPEDITED MOTION TO STRIKE DEFENDANT’S “SUPPLEMENT TO
MOTION TO DISMISS SECOND AMENDED INFORMATION AND MOTION TO
DISMISS THIRD AMENDED INFORMATION”**

COMES NOW the State of New Mexico, by and through Special Prosecutors Jason J. Lewis and Kari T. Morrissey, and submits the following Reply to defendant’s Response to Motion to Strike Defendant’s “Supplement to Motion to Dismiss second Amended Information and Motion to Dismiss Third Amended Information.” The State replies as follows:

The defendant in her response completely failed to address the singular issue presented in the State’s motion: that defendant’s so-called Supplement is not allowed by the rules established by this Court for the presentation and adjudication of motions. The Court’s motions practice requirements are set forth in NMRA Rule 5-120 (A) - (F). This rule provides for a Motion, a Response, and a Reply. Defendant had already filed her motion and reply by the time she raised new issues in her supplement, to which the State had no way to respond. Defendant provides no

explanation for not seeking leave of the Court prior to filing the supplement, and cites no authority allowing such a filing. Indeed, no such authority exists because it is clearly settled that a party must first seek leave of the Court to file a supplement and such leave may only be granted upon a showing of good cause. Instead, the defendant decided to flaunt the rules of the Court and file the supplement without leave. Such disregard of the rules should not be sanctioned by this Court.

More concerning is that the defendant acknowledges in her response that her new claims could have been raised in a second motion to dismiss. Given that the new claims concerned the Third Amended Information, rather than the First Amended Information addressed in her motion, a second motion would have been appropriate so that the State could be afforded an opportunity to respond, rather than allow the defendant to get a second chance to provide the last word (given she had already filed her reply, which should have been the final pleading on the matter). Moreover, she raised new factual issues not included in the first motion, which again supports the filing of a second motion, rather than an out-of-order supplement. Defendant should not be permitted to subvert the rules of this Court to prevent the State from being allowed to address the new issues and alleged facts raised in her supplement. Such subversion prejudices the State and undermines the authority of this Court.

WHEREFORE, the State respectfully requests the Court enter an order:

1. Striking defendant's "Supplement to Motion to Dismiss Second Amended Information and Motion to Dismiss Third Amended Information" from the docket; and
2. Require that defendant seek leave of the Court and re-file, if she chooses, the pleading in a manner that complies with the rules;
3. Any further relief the Court deems appropriate.

Respectfully submitted,

/s/ Jason J. Lewis

Jason J. Lewis

Kari T. Morrissey

Special Prosecutors

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July 2023, I served the forgoing pleading to all parties or counsel of record:

/s/ Jason J. Lewis

Jason J. Lewis