

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,
Plaintiff,

v.

No. D-101-CR-2023-00040

HANNAH GUTIERREZ,
Defendant.

ORDER SEALING PORTIONS OF RECORDS OF JURY SELECTION PROCESS

THIS MATTER came before the Court on the Court's own motion. Being fully advised,
THE COURT FINDS, CONCLUDES, AND ORDERS:

LEGAL CONCLUSIONS

1. Protected, confidential information originating from juror questionnaires is commonly relied upon by counsel during the jury selection process. *See State v. Davis*, 1983-NMCA-027, ¶ 12, 99 N.M. 522 (“It is common knowledge that in virtually all criminal cases access to jury questionnaires or data is supplied by the court to each party, giving background information, age, occupation, and other important facts relating to members of the jury panel. This information is commonly relied upon by counsel in the process of jury selection.”).
2. Juror qualification and questionnaire forms are confidential and sealed pursuant to Rule 5-606(E) NMRA. *See* Rule 5-606(E)(1) NMRA (“All completed juror qualification and questionnaire forms, including any electronic copies, in the possession of the court, attorneys, parties, and any other individual or entity shall be kept confidential unless ordered unsealed under the provisions in Rule 5-123 NMRA.”); *see also* Rule 5-606(E)

(“Prior to the examination of prospective jurors under this rule, the court shall require each prospective juror to complete a juror qualification and questionnaire forms as approved by the Supreme Court, which shall be subject to the following protections: . . .”).

3. In addition to Court rule, statutory authority states that the general public must establish “good cause” to inspect or copy lists or questionnaires of qualified jury panel members. *See* NMSA 1978, § 38-5-11(C) (2005) (“The judge or the judge’s designee shall certify a numbered list of the jury panel members’ names when qualified. The certified list of jurors and the questionnaires obtained from jurors shall be made available for inspection and copying by a party to a pending proceeding or their attorney or to any person having good cause for access to the list and the questionnaires.”).
4. “The decision whether to conduct individual voir dire lies within the discretion of the court.” *State v. Hutchinson*, 1983-NMSC-029, ¶ 10, 99 N.M. 616 (citing *State v. Frank*, 1979-NMSC-012, ¶ 8, 92 N.M. 456).
5. Rule 23-107(A)(3) NMRA prohibits the filming of the jury selection process. *See* Rule 23-107(A)(3) NMRA (“Neither the jury nor any member of the jury may be filmed in or near the courtroom, nor shall the jury selection process be filmed.”).
6. Rule 5-123(G)(1) NMRA states, “[t]he court may order that a court record be filed under seal only if the court by written order finds and states facts that establish the following: (a) the existence of an overriding interest that overcomes the right of public access to the court record; (b) the overriding interest supports sealing the court record; (c) a substantial probability exists that the overriding interest will be prejudiced if the court record is not

sealed; (d) the proposed sealing is narrowly tailored; and (e) no less restrictive means exist to achieve the overriding interest.”

FACTUAL FINDINGS AND ORDER

7. The Court finds that the audio recording and for-the-record log notes of individual voir dire during the jury selection process taking place on February 21, 2024, between 10:23:00 AM and 4:16:00 PM, in the above-captioned cause contains private, identifying, and confidential information concerning qualified jury panel members. Therefore, the Court orders said portions of the record of the jury selection process sealed.
8. The Court finds the existence of an overriding interest that overcomes the right of public access to the court record; specifically, the overriding interest is the presence of private, identifying, and confidential information concerning qualified jury panel members within the audio recording and for-the-record log notes.
9. The Court finds that a substantial probability exists that the overriding interest will be prejudiced if the court record is not sealed.
10. The Court finds that the sealing is narrowly tailored.
11. The Court finds that no less restrictive means exist to achieve the overriding interest.
12. The parties to the case, counsel thereof, and appellate courts (in the instance of appeal) shall have access to the sealed record identified herein. This Order shall remain in effect until further order of the Court. The parties to the case and counsel thereof are entitled to notice of any future motion to unseal the court record or modify the sealing order. *See generally* Rule 5-123(G) NMRA.
13. This sealing order shall not impede any party’s right to raise on appeal any reserved objection lodged during the jury selection process. In such an instance, the Court

instructs a party to file an expedited motion to unseal the pertinent portions of the sealed record, which such expedited motion will be heard promptly by the Court.

CONCLUSION

IT IS THEREFORE ORDERED that the records identified herein of individual voir dire during the jury selection process shall be sealed pursuant to this Order.

IT IS HEREBY ORDERED.



MARY MARLOWE SOMMER
DISTRICT COURT JUDGE
DIVISION VIII

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date of acceptance for e-filing a true and correct copy of the foregoing was e-served on counsel registered for e-service in this matter as listed below.

Kari T. Morrissey
Jason J. Lewis
1303 Rio Grande Blvd., NW Suite 5
Albuquerque, NM 87104
ktn@morrisseylewis.com
jjl@jjllaw.com
Special Prosecutors for the State

Jason Bowles
Bowles Law Firm
4811 Hardware Drive, NE, Bldg D, Suite 5
Albuquerque, N.M. 87109

Todd J. Bullion
Law Office of Todd J. Bullion
4811 Hardware Drive, NE, Bldg D, Suite 5
Albuquerque, N.M. 87109

Monnica L. Barreras
Law Office of Monnica L. Barreras
P.O. Box 27158

Albuquerque, NM 87125
Attorneys for Defendant

Faith Griego

Trial Court Administrative Assistant