

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,

PLAINTIFF,

VS.

ALEXANDER RAE BALDWIN III,

DEFENDANT.

No. D-0101-CR-2024-0013
Judge Mary Marlowe Sommer

DEFENDANT ALEC BALDWIN'S MOTION TO DISMISS THE INDICTMENT COMBINED
EXHIBIT SET 5 OF 10

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EXHIBIT 9

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

STATE OF NEW MEXICO

Plaintiff,

vs.

ALEXANDER RAE BALDWIN III,

Target.

No. D-0101-GJ 2023-00008
Judge T. Glenn Ellington

**ALEC BALDWIN'S RESPONSE TO STATE'S MOTION TO EXCLUDE
BALDWIN'S REQUESTED ELEMENTS INSTRUCTIONS TO THE GRAND JURY**

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INTRODUCTION

The accident on the set of *Rust* was precisely that—an accident. Alec Baldwin had no reason to believe there were live bullets in the gun, in the church, or even on the property. He had no reason to believe that *anyone* was in danger when rehearsing the scene that led to Hutchins' death. That is clear from the testimony of numerous witnesses, as well as the fact that Hutchins herself directed Baldwin where to point the gun. Hutchins and Baldwin shared the same state of mind in that moment: Hutchins never would have given those directions if she thought Baldwin's conduct presented any danger. Nor would the Director, Joel Souza, who was sitting behind Hutchins, have permitted the rehearsal to continue if he believed Baldwin was willfully disregarding a risk to human life.

Yet the State seeks to transform this tragic accident into a homicide charge against Baldwin. It does so, at least in part, by refusing to give two jury instructions that apply under settled New Mexico law. *First*, the grand jury should be told that the State must prove Baldwin was subjectively aware of the specific risk at issue—*i.e.*, that the gun he was handling was likely loaded with live ammunition and therefore posed a substantial risk to human life—and that he willfully disregarded that risk when pointing the gun toward Hutchins. That is the law in New Mexico. It is also common sense. In the movies, actors throw each other out of buildings and over cliffs all the time, even though engaging in similar conduct in real life would land them in prison. But we don't charge them with attempted homicide or similar crimes, because they do not have subjective knowledge of a specific risk that the safety harnesses are likely to break or the net at the bottom of the cliff is likely to fail. If the State's theory of the case were adopted, it would be virtually impossible to make a movie. And we would be regularly charging people involved in accidents with homicide even when they had no reason to believe their conduct threatened human

life. The Court should require the knowledge instruction that Baldwin requests, which comprehensively explains the requisite state of mind consistent with governing law.

Second, Baldwin requests a proximate cause instruction, since the conduct of other individuals on the movie set were intervening causes of Hutchins' death. Although the State does not dispute that Baldwin is entitled to a proximate cause instruction, it argues that the Court should require UJI 14-134 instead of Baldwin's proposed language. But UJI 14-134 explicitly states that it "is not to be used in homicide cases," and instead refers to Instructions 14-251 and 14-252 for use in homicide cases. The State's request is contrary to New Mexico law and should be rejected.

Separately, the State also argues that Baldwin should have no say about which instructions are given to the grand jury. The State is wrong. In *Jones v. Murdoch*, 145 NM 473, 2009 NMSC-002, the New Mexico Supreme Court stated that a target is entitled to submit an alert letter to the Court with relevant evidence, *as well as* "any other matters that may be helpful to communicate to the prosecutor or judge." It is clearly helpful for Baldwin to communicate the content of proper jury instructions, especially here, where the State has repeatedly engaged in conduct designed to prejudice Baldwin and where its brief proposes incomplete and inapplicable instructions.

The Court should provide Baldwin's requested instructions to the grand jury.

ARGUMENT

As the State concedes, it is required to "provide the grand jurors with instructions setting forth the elements of each offense being investigated and the definitions of any defense raised by the evidence" and "other instructions that are necessary to the fair consideration by the grand jury of the issues presented." (State Br. at 3.) Baldwin's requested instructions satisfy this standard.

I. THE COURT SHOULD PRESENT BALDWIN'S REQUESTED KNOWLEDGE INSTRUCTIONS TO THE GRAND JURY

Baldwin has requested that the Court inform the grand jury that he must have been

subjectively aware of a risk that the gun was likely loaded with a live round. Although the State concedes that Baldwin must have had “subjective knowledge . . . of the danger or risk posed to others by his actions” to be charged with involuntary manslaughter, the State does not want the grand jury to know what that “danger” or “risk” actually is. The State should not be permitted to hide the ball from the grand jury.

As the State acknowledges, the Uniform Jury Instructions (UJI 14-231) state that the following instruction regarding knowledge must be used in involuntary manslaughter cases:

[T]he state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

...

2. _____ (name of defendant) should have known of the danger involved by _____’s (name of defendant) actions;

3. _____ (name of defendant) acted with a willful disregard for the safety of others;

The State accepts this instruction, yet it balks at Baldwin’s request that the State describe the danger or risk of which he supposedly should have known. But “danger” and “risk” do not exist in a vacuum. A target must have been aware of the danger or risk of *something*. Here, that “something” is whether the gun was likely loaded with live bullets and therefore posed a substantial risk to human safety. There is no evidence, for example, that Baldwin purchased the gun, oversaw the acquisition of props, purchased the bullets, or hired the armorer and first safety officer. Therefore, to charge Baldwin, he must have been subjectively aware that pointing the gun toward Hutchins posed a danger to her life because it was likely loaded with live ammunition. The State does not want the Court to inform the grand jury of this requirement, however, because it *knows* that Baldwin had no such subjective knowledge—indeed, there’s no way Hutchins or Souza would have directed or permitted Baldwin’s conduct if they thought it was dangerous. This case

is not about an individual mishandling a firearm in a home or private setting; this tragedy occurred on a movie set, where witnesses have already stated that the presence of live ammunition was universally considered “unfathomable.”

In these circumstances, the State should not be permitted to confuse the grand jury about the danger or risk at issue. Instead, the grand jurors should first be instructed that the criminal negligence standard requires the State to prove that Baldwin had subjective knowledge of an actual risk or danger to Hutchins’ life. As noted in the comments to UJI 14-231, manslaughter requires a showing of criminal negligence, which, in turn, includes the concept of recklessness. UJI 14-231, cmt. 1; *State v. Grubbs*, 85 N.M. 365, 512 P.2d 693 (Ct. App. 1973) (finding that manslaughter committed by a lawful act done in an unlawful manner or without due caution and circumspection requires a showing of criminal negligence, *i.e.*, conduct that is reckless, wanton, or willful); *State v. Salazar*, 1997–NMSC–044, ¶ 54, 123 N.M. 77 (same); *State v. Henley*, 2010-NMSC-039, ¶ 16, 148 N.M. 359 (the “showing of criminal negligence required for an involuntary manslaughter jury instruction includes the concept of recklessness”). Therefore, the grand jury should be told that the State must prove the “defendant ‘consciously disregarded a substantial and unjustifiable risk’ that harm will result from his conduct. ... To be convicted of involuntary manslaughter, a defendant must have been aware of the risk caused by his or her conduct and continued to act.” *Henley*, 2010-NMSC-039, ¶ 16; *see also State v. Skippings*, 2011-NMSC-021, ¶ 18, 150 N.M. 216 (“the defendant must possess subjective knowledge ‘of the danger or risk to others posed by his or her actions.’”).

The grand jury should next be instructed that, in order to indict Baldwin, the State must prove that Baldwin was aware of the specific risk at issue—the risk that the gun was likely loaded with live ammunition—and that he willfully disregarded this risk by following Hutchins’ direction

to point the gun toward the camera. *See State v. Campos*, 2019 WL 13156049, at *3 (N.M. Ct. App. Dec. 23, 2019) (“As for subjective knowledge, Defendant said that he kicked the knife and picked it up so he would not get stabbed and his daughter would not get injured. These statements show that Defendant *understood he or another could be injured by the knife given the circumstances*. From this, a rational jury could infer Defendant possessed the subjective knowledge of the danger posed to others by picking up the knife.”) (emphasis added); *Skippings*, 2011-NMSC-021, ¶ 19 (“Even though Defendant contended at trial that he was unaware of the danger posed by his actions, a jury could infer from the circumstances that Defendant possessed the required subjective knowledge. As the State suggested at trial, a jury could conclude that Defendant was aware ‘of the danger or risk to others posed by his ... actions’ *when he caused Victim to fall on the hard asphalt, a commonly understood peril.*”) (emphasis added). *See also* Eugene Volokh (UCLA Law Professor), *What Exactly Is “Manslaughter” in the Alec Baldwin Case?*, Reason (Jan. 19, 2023), <https://reason.com/volokh/2023/01/19/what-exactly-is-manslaughter-in-the-alec-baldwin-case/> (“The prosecution would have to prove, beyond a reasonable doubt, that he was subjectively aware of the danger: that he actually thought about the possibility that the gun might be loaded, and proceeded to point it and pull the trigger despite that.”); Alan Dershowitz, *Why Charging Alec Baldwin with Manslaughter Is Wrong*, Newsweek (Jan. 19, 2023), <https://www.newsweek.com/why-charging-alec-baldwin-manslaughter-wrong-opinion-1775163> (“In this case, Baldwin claims that he was explicitly told the gun did not contain live ammunition. Even if prosecutors can cast doubt on this self-serving statement, it will be impossible for them to prove beyond a reasonable doubt that Baldwin believed he was risking Hutchins’ life by pulling the trigger or cocking the gun.”).

In short, the State must prove that Baldwin had subjective knowledge that pointing the gun toward Hutchins, at her direction, presented a danger or risk to her life because it was likely to be loaded with live rounds. There is no legitimate reason to deny the grand jury this critical information. The Court should require the instruction that Baldwin has requested.

II. THE COURT SHOULD PRESENT BALDWIN'S REQUESTED PROXIMATE CAUSE INSTRUCTIONS TO THE GRAND JURY

The State concedes that a proximate cause instruction must be read to the grand jury. The State argues, however, that the instruction should be modeled after UJI 14-134. The State is wrong. The notes to UJI 14-134 state that it "is not to be used in homicide cases." Instead, UJI 14-134 refers to Instructions 14-251 and 14-252 for use in homicide cases. This is a homicide case, since the State seeks to charge Baldwin with involuntary manslaughter. *See* 1978 NMSA, Ch. 30, Art. 2: Homicide (including 1978 NMSA 30-2-3, Manslaughter). Therefore, the Court should reject the State's position and instruct the grand jury as Baldwin has requested.

Specifically, the grand jury should be instructed that proximate cause is an element of causation and that proximate cause is negated when a third party's negligence was the only significant cause of death *or* constituted an intervening cause that broke the foreseeable chain of events. *See State v. Munoz*, 1998-NMSC-041, 126 N.M. 371, 970 P.2d 143 (stating that proximate cause has two elements: (1) defendant's act was a significant cause of the harm; and (2) the harm or injury was a foreseeable result of the defendant's act). To explain these elements, UJI 14-251 requires the following instruction:

In addition to the other elements of the crime of _____ (name of crime) as set forth in instruction number _____, the state must also prove to your satisfaction beyond a reasonable doubt that

1. The death was a foreseeable result of _____;
2. The act of the defendant was a significant cause of the death of _____ (name of victim). The defendant's act was a significant cause of death if it was an

act which, in a natural and continuous chain of events, uninterrupted by an outside event, resulted in the death and without which the death would not have occurred.

3. There may be more than one significant cause of death. If the acts of two or more persons significantly contribute to the cause of death, each act is a significant cause of death.¹

When evidence exists that a third-party's negligence was an intervening cause that broke the causal chain, the Defendant is entitled to an intervening cause instruction to be used alongside UJI 14-251. See *State v. Benavidez*, 1980-NMSC-097, 94 N.M. 706, 616 P.2d 419; *State v. Brown*, 2022 WL 10225171, at *3 (N.M. Ct. App. Oct. 17, 2022) ("Where the jury could reasonably find that the negligence of another person was a cause of an injury . . . that negligence should be considered by the jury in determining whether the defendant's conduct was the proximate cause of the injury, and the court must instruct the jury accordingly."). Thus, UJI 14-252 requires the following instruction:

The State must prove beyond a reasonable doubt that the defendant's act was a significant cause of the death of _____ (name of victim). An issue in this case is whether the negligence of a person other than the defendant may have contributed to the cause of death. Such contributing negligence does not relieve the defendant of responsibility for an act that significantly contributed to the cause of the death so long as the death was a foreseeable result of the defendant's actions.

However, if you find the negligence of a person other than the defendant was the only significant cause of death or constitutes an intervening cause that breaks the foreseeable chain of events, then the defendant is not guilty of the offense of _____ (name of offense).

In this case, the evidence shows that others were directly responsible for set safety in general, and firearm safety in particular. For example, David Halls described himself as the "last line of defense" and admitted that he did not fully check the gun before handing it to Baldwin. And Halls' check came only after Hannah Reed, the armorer, violated her obligations by loading

¹ UJI 14-251 provides that this instruction should be included when, as here, more than one person contributed to the cause of death.

the gun with live rounds, which were prohibited from being on set. The list of intervening causes is long, each of which terminates Baldwin's criminal exposure.

The Court should require the proximate cause instructions that Baldwin requested.

III. THE COURT SHOULD EXERCISE ITS AUTHORITY UNDER *JONES V. MURDOCH* AND REQUIRE THE INSTRUCTIONS THAT BALDWIN HAS REQUESTED

The State argues that the Court should ignore Baldwin's requested instructions because they do not constitute "exculpatory evidence." At this point, it is far from surprising that the State's brief has misstated the law. Indeed, the State started this prosecution by charging Baldwin with a firearm enhancement that had not been enacted when the accident occurred, and the State then threatened Baldwin with sanctions and disparaged his counsel in the media for pointing out that fact to the Court. It is troubling, however, that the State would urge the Court to ignore Baldwin's position entirely—as if this is the Star Chamber in which Baldwin has no right to be heard. That's especially so when Baldwin's requested instructions are required by settled law, and the State's proposed instructions are incomplete and inapplicable. It is for situations like this that the New Mexico Supreme Court issued its decision in *Jones v. Murdoch*, which gives Your Honor the supervisory powers to ensure a fair process.

In *Jones v. Murdoch*, 145 NM 473, 2009 NMSC-002, the Court recognized the importance of avoiding an unjust indictment. As the Court explained,

a wrongful indictment is no laughing matter; often it works a grievous, irreparable injury to the person indicted. The stigma cannot be easily erased. In the public mind, the blot on a man's escutcheon, resulting from such a public accusation of wrongdoing, is seldom wiped out by a subsequent judgment of not guilty. Frequently, the public remembers the accusation, and still suspects guilt, even after an acquittal.

Jones, 145 NM at 480 (citing *In re Fried*, 161 F.2d 453, 458–59 (2d Cir. 1947)).

To that end, *Jones* held that the grand jury judge has supervisory control over the grand jury proceedings. It is the Court, not the State, that has the authority to determine the requirements

of fairness, due process, and New Mexico law. *See Jones*, 145 N.M. at 478-479 (stating that the court has a “supervisory duty,” and that the prosecutor is a mere “aide to the grand jury” and does not occupy the “role of the grand jury itself”).

The Court in *Jones* also noted that a target’s alert letter may contain both relevant evidence, as well as “any other matters that may be helpful to communicate to the prosecutor or judge.” *Id.* at 485. That is precisely what Baldwin has submitted here: helpful information about jury instructions that are required by New Mexico law and therefore should be given to the grand jury. If Baldwin hadn’t supplied this information, then the State would have presented jury instructions that were both incomplete and inapplicable.² And it would have refused to give the accurate instructions that Baldwin has requested. That is a quintessential example of helpful information that a target should be permitted to communicate to the Court and the State. It is also information that the State should not be permitted to ignore.

The Court should exercise its supervisory duty under *Jones* and require that Baldwin’s proposed subjective knowledge and proximate cause instructions be given to the grand jury.

CONCLUSION

The Court should order that Baldwin’s proposed instructions be given to the grand jury.

² Notably, the State also would have ignored nearly all of the facts contained in Baldwin’s alert letter on the basis that, in the State’s mistaken view, they did not constitute “exculpatory evidence that directly negates [a finding of] guilt.” (Resp. at 2.) Once again, the State seeks to hold Baldwin to a higher standard than the law requires. The Court in *Jones* did not prohibit a target from presenting evidence unless it is directly exculpatory. Rather, *Jones* ruled that the target may present any “evidence that is ‘lawful, competent, and relevant’ and ‘that would disprove or reduce an accusation or that would make an indictment unjustified.’” *Jones*, 145 N.M. at 485 (citing NMSA 1978. § 31-6-11).

Date: December 15, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2023, a true and correct copy of the foregoing brief was emailed to opposing counsel.

/s/ Heather LeBlanc
Heather LeBlanc

EXHIBIT 10

STATE OF NEW MEXICO
SANTA FE COUNTY
FIRST JUDICIAL DISTRICT COURT

D-101-GJ-2023-00008

IN THE MATTER OF THE GRAND JURY,

STATE OF NEW MEXICO,
Plaintiff,

vs.

ALEXANDER RAE BALDWIN,
Target.

ORDER VACATING AND RESCHEDULING GRAND JURY INQUIRY

THIS MATTER, coming before the Court on the Court's own Motion to Vacate the Grand Jury Presentation in this Inquiry on November 16, 2023 and Reset the Grand Jury Inquiry.

IT IS THEREFORE ORDERED that the Grand Jury Presentation in this Inquiry scheduled for November 16, 2023 is hereby Vacated and Reset on January 18, 2023 at 9:00 AM.



T. Glenn Ellington
DISTRICT JUDGE

CERTIFICATE OF SERVICE

This document was e-filed and served, on the **date of acceptance**, to all parties below:

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By: 
Lorraine Ortiz, MBA
Paralegal to the Honorable T. Glenn Ellington

EXHIBIT 11

ENDORSED
First Judicial District Court
JAN 11 2024

Santa Fe, Rio Arriba &
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STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

IN THE MATTER OF THE GRAND JURY

No.: D-101-GJ-2023-00008

STATE OF NEW MEXICO,
Plaintiff,

v.

ALEXANDER RAE BALDWIN III,
Target.

**ORDER ON STATE'S EXPEDITED MOTION TO PRECLUDE TARGET'S
REQUESTED TESTIMONY AND EVIDENCE BEFORE THE GRAND JURY**

THIS MATTER came before the Court on the State's Expedited Motion to Preclude Target's Requested Testimony and Evidence Before the Grand Jury (the "Expedited Motion"), filed November 15, 2023. Having reviewed the briefing and being otherwise fully advised, THE COURT FINDS, CONCLUDES, AND ORDERS:

PROCEDURAL SUMMARY

1. On November 15, 2023, the State filed its Expedited Motion in response to an alert notice, entitled Grand Jury Evidence Notice to District Attorney, dated November 14, 2023, and provided to the State by the Target pursuant to Rule 5-302.2(C) NMRA. *See* Expedited Mot., Exs. 1, 2.
2. The Court initially held a remote hearing to consider oral argument on the Expedited Motion on November 15, 2023. However, given the length and breadth of the Expedited Motion, the Court rescheduled this hearing to January 11, 2024.
3. On January 11, 2024, the Court held a remote hearing to verbally announce its decision. Ms. Kari Morrissey and Mr. Jason Lewis, Special Prosecutors, appeared on behalf of the

State. Mr. Luke Nikas, Mr. Alex Spiro, and Ms. Heather LeBlanc, Attorneys for Target Baldwin, appeared on behalf of the Target.

4. The Court exercises its discretion to rule on the filed pleadings without considering oral argument. *See* Rule LR1-305(D) NMRA; *see also* Rule 5-302.2(C)(4) NMRA (regarding a motion on the target's proposed evidence or defenses, while the Court "may convene a hearing," the Court must "give the prosecuting attorney clear direction on how to proceed before the grand jury, making a record of the decision").

ANALYSIS

The Court Overrules the Bulk of the State's Objections to the Target's Evidence.

5. "When serving as an aide to the grand jury, a prosecuting attorney must facilitate the grand jury's inquiry into any lawful, relevant, and competent evidence not initially presented by the State and cannot unilaterally withhold evidence or witnesses requested by the grand jury." *Herrera v. Sanchez*, 2014-NMSC-018, ¶ 25, 328 P.3d 1176 (citations omitted); *see also State v. Cruz*, 1983-NMSC-045, ¶ 7, 99 N.M. 690 ("In dealing with the grand jury, the prosecutor's duty is to protect both the public's interest and the rights of the accused." (citation omitted)).
6. Per NMSA 1978, Section 31-6-11(B) (2003), "the target or his counsel may alert the grand jury to the existence of evidence that would disprove or reduce an accusation or that would make an indictment unjustified, by notifying the prosecuting attorney who is assisting the grand jury in writing regarding the existence of that evidence."
7. "If the target timely submits a grand jury alert notice to the prosecutor, the prosecutor is obligated to alert the grand jury to any target-offered evidence that is 'lawful, competent and relevant,' § 31-6-11(A), and 'that would disprove or reduce [an] accusation or . . .

make an indictment unjustified,’ § 31-6-11(B).” *Herrera*, 2014-NMSC-018, ¶ 20 (citing *Jones v. Murdoch*, 2009-NMSC-002, ¶ 33, 145 N.M. 473). Notably, New Mexico’s “grand jury statutes require only that the prosecuting attorney *alert* the grand jury to the existence of target-offered evidence and do not require the prosecutor to actually *present* such evidence.” *Id.* (citing *Jones*, 2009-NMSC-002, ¶¶ 12, 24) (emphasis in original); *see also Jones*, 2009-NMSC-002, ¶ 28 (“Thus, in light of past practice, it would be unreasonable to conclude that the Legislature decided to explicitly give the target the right to alert the grand jury to the existence of exculpatory evidence while nevertheless allowing the prosecutor to reject such offers without a check, particularly since the 2003 amendments to Section 31-6-11(B) also eliminated the prosecutor’s duty to present evidence that directly negates guilt.” (citation omitted)).

8. “Once alerted to target-offered evidence, ‘the grand jury remains free to decide not to hear the evidence . . . or to hear the evidence and weigh it as it sees fit.’” *Herrera*, 2014-NMSC-018, ¶ 20 (quoting *Jones*, 2009-NMSC-002, ¶ 12).
9. Here, invoking Rule 5-302.2(C) NMRA, the Target provided the State with a Grand Jury Evidence Notice to District Attorney on November 14, 2023. In turn, via the Expedited Motion, the State objects to nearly all evidence about which the Target seeks to alert the Grand Jury. Specifically, the State argues that the “target is permitted to propose only that testimony and evidence that is directly exculpatory; circumstantial exculpatory evidence is not permitted. The State is required to present to the grand jury only exculpatory evidence that directly negates defendant’s guilt.” Expedited Mot. 3. In support thereof, the State cites to cases that precede the paradigm-shifting decision of *Jones v. Murdoch*, 2009-NMSC-002, 145 N.M. 473, and the subsequent expounding decision of *Herrera v.*

Sanchez, 2014-NMSC-018, 328 P.3d 1176. Ultimately, the Court disagrees with the State's analysis.

10. Rather, the Court's analysis is guided by the analytical framework developed in *Jones* and *Herrera*. As explained in *Herrera*, "the grand jury judge must determine whether the target-offered evidence is 'lawful, competent, and relevant,' and whether the evidence 'disproves or reduces a charge or accusation' or 'makes an indictment unjustified.'" *Herrera*, 2014-NMSC-018, ¶ 21 (citations omitted); *see also* § 31-6-11(A) ("The Rules of Evidence shall not apply to a grand jury proceeding."). Hence, the target-offered evidence need not be directly exculpatory to compel the State to alert the grand jury to its existence. *See Jones*, 2009-NMSC-002, ¶ 28. Further, "[b]ecause the Legislature intended to give the grand jury access to more evidence, not less, the prosecution carries the burden of persuading the grand jury judge that the grand jury should not be alerted to target-offered evidence." *Id.* ¶ 39.
11. Regarding the Target's proposed witnesses and tangible evidence, the Court finds, concludes, and orders as follows:
 - a. Witness No. 1: Joel Souza; Witness No. 2: David Halls; Witness No. 3: Sarah Zachry; Witness No. 4: Ryan Smith; Witness No. 5: Det. Alexandria Hancock; Witness No. 6: Det. Joel Cano; and, Witness No. 7: Robert Schilling.
 - i. The State fails to persuade the Court that the potential testimony is not lawful, competent, or relevant. Further, the State fails to persuade the Court that the potential testimony may not disprove or reduce a charge or accusation, or may not make an indictment unjustified. The State shall alert the grand jury to the existence

of these witnesses and their potential testimony via the Target's grand jury evidence alert letter.

- b. Document No. 1: Recording of 911 Call; Document No. 2: Prop Truck Warrant; Document No. 3: Church Search Warrant; Document No. 4: PDQ Arm & Prop LLC Search Warrant; Document No. 5: New Mexico Occupational Health and Safety Report; Document Nos. 6(a)-(i): Excerpts From Santa Fe Sheriff's Office Report – (a) Joel Souza, (b) Hannah Gutierrez-Reed, (c) Sarah Zachry, (d) Dave Halls, (e) Reid Russel, (f) Jensen Ackles, (g) Ross Addiego, (h) Sarah Zachry Cell Phone Report, & (i) Seth Kenney Cell Phone Report; Document No. 7: Text Messages Between Sarah Zachry and Seth Kenney; Document No. 8: Text Messages Between Hannah Gutierrez-Reed and Seth Kenney; Document No. 10: Crew Letter; Document No. 12: Video Clip from *Rust* Set; Document No. 13: Video Clip from *Rust* Set; and, Document No. 14: Halls Proffer Transcript.
 - i. The State fails to persuade the Court that the proposed evidence is not lawful, competent, or relevant. Further, the State fails to persuade the Court that the proposed evidence may not disprove or reduce a charge or accusation, or may not make an indictment unjustified. The State shall alert the grand jury to the existence of this evidence and the corresponding non-argumentative description via the Target's grand jury evidence alert letter.
- c. Document No. 9: Industry Wide Labor-Management Safety Bulletin No. 1; Document No. 11: Video Clip from *Rust* Set.
 - i. Per the State's Expedited Motion, the State will present these materials to the grand jury. *See* Expedited Mot. 31-32.

d. Document No. 6(j): Excerpts From Santa Fe Sheriff's Office Report - (j) Katya Luce.

- i. Based upon the proffer by the Target, and the State's response within the Expedited Motion, the Court grants the State's motion to exclude this information from the Target's grand jury evidence alert letter. Based upon the proffers, the proposed evidence appears not relevant, and does not appear to disprove or reduce a charge or accusation, or make an indictment unjustified.

The Court Refrains from Addressing the State's Objections to the Target's Proposed Questions.

12. The State's Expedited Motion comprehensively analyzes the Target's proposed questions for the Target's potential witnesses. However, as explained by the New Mexico Supreme Court in *Jones*, "[the N.M. Supreme Court] find[s] it imprudent to fashion a pre-indictment mechanism to ensure that the prosecutor questions the witness in the manner proposed by the target or otherwise elicits the evidence in the way that the target intended. To begin with, the grand jury very well might decline to hear the target-offered evidence upon learning of its existence. And even if the grand jury does ask the prosecutor to call the target-offered witnesses, to require the grand jury judge to formulate the script by which the prosecutor must question the witness would be highly impractical and most likely ineffective" *Jones*, 2009-NMSC-002, ¶ 37. Rather, if the prosecution "intentionally question[s] the witness in a manner intended to keep the witness from providing the grand jury with information that the target wanted before the grand jury," then "the only practical recourse for the target must come post-indictment after the target has the opportunity to

review the transcript of the grand jury proceedings to evaluate the fairness of the prosecutor's actions." *Id.* ¶ 38.

13. Therefore, the Court declines to prescribe the exact manner of questioning by the State for any target-alerted witness, but cautions the State on the Target's potential remedy identified above if the State's questioning runs afoul of the standards described in *Jones*.

The Court Instructs the Target to Rewrite Its Grand Jury Evidence Alert Letter within the Parameters Set Forth in Rule 5-302.2 NMRA.

14. When a target elects to submit an evidence alert letter to the grand jury, the "target's submission shall consist of a factual and non-argumentative description of the nature of any tangible evidence and the potential testimony of any witnesses, along with the names and contact information of any witnesses necessary to provide the evidence." Rule 5-302.2(C)(3)(a) NMRA. Here, the Court finds that the Target's proposed grand jury evidence alert letter contains argument in several instances. *See Black's Law Dictionary* (11th ed. 2019), argument (" . . . 2. A statement that attempts to persuade by setting forth reasons why something is true or untrue, right or wrong, better or worse, etc.; *esp.*, the remarks of counsel in analyzing and pointing out or repudiating a desired inference, made for the assistance of a decision-maker. 3. The act or process of attempting to persuade." (emphasis added)); *see generally* Expedited Mot., Ex. 2 (setting forth Target's proposed grand jury evidence alert letter).
15. Therefore, the Court instructs the Target to modify its Grand Jury Evidence Alert Letter to remove the struck language as appearing in the attached Court's Exhibit 1.


The Court Declines to Instruct the State on the Logistics of Securing the Availability of the Target's Alerted Witnesses and Tangible Evidence.

16. "Once alerted to target-offered evidence, 'the grand jury remains free to decide not to hear the evidence . . . or to hear the evidence and weigh it as it sees fit.'" *Herrera*, 2014-NMSC-018, ¶ 20 (quoting *Jones*, 2009-NMSC-002, ¶ 12). Accordingly, the Court instructs the State to make readily available the proposed tangible evidence and potential witnesses to avoid scheduling disruptions if the grand jury wishes to hear the evidence once alerted. However, the Court declines to provide additional instruction to the State on securing witness availability. *See Herrera*, 2014-NMSC-018, ¶ 25 ("When serving as an aide to the grand jury, a prosecuting attorney must facilitate the grand jury's inquiry into any lawful, relevant, and competent evidence not initially presented by the State and cannot unilaterally withhold evidence or witnesses requested by the grand jury." (citations omitted)).

CONCLUSION

IT IS THEREFORE ORDERED that the State and Target shall proceed in accordance with this Order and as further directed herein.

IT IS HEREBY ORDERED.



T. GLENN ELLINGTON
DISTRICT COURT JUDGE
DIVISION VII

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date of acceptance for filing a true and correct copy of the foregoing was emailed to counsel for the parties as listed below.

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Trial Court Administrative Assistant

EXHIBIT

Court's
Exhibit 1

GRAND JURY EVIDENCE ALERT LETTER

INVESTIGATION RE: Alexander Rae Baldwin III

Hearing Date: November 16, 2023

Case No.: D-101-GJ 2023-00008

Dear Grand Jurors:

In accordance with the rights and obligations of the Grand Jury under New Mexico law, the above-noted subject/target of the Grand Jury proceeding in this case requests the grand jury consider the following evidence:

PART I: ELEMENTS

~~Mr. Baldwin requests that the Grand Jurors be alerted to the fact that the criminal negligence standard requires the prosecution to show that Mr. Baldwin had subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition.~~

~~Mr. Baldwin requests that the Grand Jurors be alerted that proximate cause is an element of causation, and that the element of proximate cause is negated where the negligence of a third party (i.e., someone other than Mr. Baldwin) was the only significant cause of death or constitutes an intervening cause that broke the foreseeable chain of events.~~

PART II: WITNESSES

Witness No. 1: Joel Souza: Contact: souzajoel007@yahoo.com (510) 552-2171

Potential Testimony: Mr. Souza is the Director of *Rust*. He was primarily responsible for all creative aspects of the film and ~~relied on the entire cast and crew to bring his creative vision to life.~~ He was present in the church during the rehearsal scene and was struck by the fatal bullet after it passed through Halyna Hutchins. He suffered ~~non-life threatening~~ injuries.

Witness No. 2: David Halls: Contact: davehalls.ad@gmail.com (612) 414-6056

Potential Testimony: Mr. Halls was the First Assistant Director and Safety Coordinator on the set of *Rust*. He ~~was in charge of managing and supervising all departments on set and was responsible for safety conditions on set.~~ He is aware of the conditions on set and the day of the incident. He was present in the church when the fatal shot discharged.

Witness No. 3: Sarah Zachry: Contact: Sarahbrianne97@gmail.com (505) 264-1702

Potential Testimony: Ms. Zachry was *Rust*'s prop master, responsible for acquiring, placing, and/or overseeing any props needed for the production, including prop firearms and ammunition. As prop master, she oversaw and supervised the armorer, Hannah Gutierrez-Reed, and was the only other person on set with responsibility for the storage and handling of firearms and ammunition. Along with Hannah Gutierrez-Reed, she was responsible for procuring firearms and ammunition from *Rust*'s third-party supplier.

Witness No. 4: Ryan Smith: Contact: rs@streamlineglobal.com

Potential Testimony: Mr. Smith was a Producer of the film *Rust* and was responsible for overseeing the overall production. He has knowledge of the various roles and responsibilities of members of the production. He will be able to provide testimony about Mr. Baldwin's contractual agreements, roles, and responsibilities for the film. He will be able to testify as to the extent and limitations of Mr. Baldwin's contract with the film with respect to hiring and supervising other cast and production members in their roles.

Witness No. 5: Det. Alexandria Hancock:

Contact: c/o Sergeant Alderete ealderete@santafecountynm.gov

Potential Testimony: Detective Hancock is a Santa Fe Sheriff's Detective who acted as the lead investigator on the case. She has knowledge of how the investigation proceeded, how evidence was gathered, and potential gaps in the investigation.

Witness No. 6: Det. Joel Cano:

Contact: c/o Sergeant Alderete

ealderete@santafecountynm.gov

Potential Testimony: Detective Cano is a Santa Fe Sheriff's Detective who acted as one of the investigators on the case. He has knowledge of how the investigation proceeded, how evidence was gathered, and potential gaps in the investigation that suggest Mr. Baldwin's innocence.

Witness No. 7: Robert Schilling: Contact: Shilling.robert@gmail.com

Proposed Testimony: Mr. Schilling was hired as an investigator for the state and was aware of deficiencies in the investigation, including leads that were not run down. He expressed his view that the investigation conducted by the SFSO over the course of more than a year could not be remediated.

PART III: DOCUMENTS

Document No. 1: Recording of 911 Call

The document is an audio-recording of the 911 call placed by Mamie Mitchell, the film's script supervisor, immediately after the incident took place. Ms. Mitchell witnessed the incident from inside the church and was standing just a few feet away from where the gun went off. ~~On the recording, Ms. Mitchell can be heard telling the 911 operator that two people were "accidentally shot" on a movie set. She is also heard saying that Dave Halls, the First Assistant Director, was "supposed to check the gun" and that "he's responsible for [inaudible]."~~

Document No. 2: Prop Truck Warrant

On October 27, 2021, the Sante Fe Sherriff's Office executed a warrant for the prop truck on the *Rust* movie set, which is where firearms and ammunition were stored throughout the production. The warrant contains ~~numerous exculpatory statements from several witnesses, including a statement from camera operator Reid Russel (who said Mr. Baldwin "had been very careful" with the firearms) and a statement from Dave Halls, who said the incident "was not a deliberate act" and "he [Halls] should have checked all of [the rounds in the gun], but didn't."~~

Document No. 3: Church Search Warrant

On October 22, 2021, the Sante Fe Sherriff's Office executed a warrant at the church on the *Rust* movie set where the incident took place. The warrant contains ~~numerous exculpatory statements from the affiant, including a statement that Dave Halls "handed the gun to" Mr. Baldwin and "yelled, 'Cold Gun,' indicating the prop gun did not have any live rounds."~~

Document No. 4: PDQ Arm & Prop LLC Search Warrant

On November 30, 2021, the Sante Fe Sherriff's Office executed a warrant at PDQ Arm & Prop LLC, the shop that supplied the rounds to the *Rust* set. The warrant states ~~that Hannah Gutierrez-Reed, the film's armorer, admitted that she "didn't really check [the gun] too much" after lunch. The warrant also states that multiple live rounds were found on the set in the box of ammo that Gutierrez-Reed was pulling from, and that Gutierrez-Reed's father had given Seth Kenney, the owner of PDQ, a can of live ammo that may match the live ammo found on the *Rust* set.~~

Document No. 5: New Mexico Occupational Health and Safety Report

This document is a report from the New Mexico Occupational Health and Safety Bureau, which conducted an investigation to determine whether the incident was caused by the failure of Rust Movie Productions LLC or its employees to implement proper workplace safety protocols. The

report demonstrates that Mr. Baldwin was not part of *Rust* Management — i.e., the individuals responsible for hiring, scheduling, budgeting, and overseeing set safety. The report states that “Baldwin’s authority on the set” was limited to “approving script changes and actor candidates.”

Document Nos. 6(a)-6(j): Excerpts From Santa Fe Sherriff’s Office Report

These documents represent excerpts of reports from the Santa Fe Sherriff’s Office. Each report was prepared by the lead investigator, Det. Alexandria Hancock, or by another investigator, Joel Cano. The reports summarize interviews with several key witnesses which were conducted on the scene immediately following the incident and in the weeks that followed, including:

a. Joel Souza (director)

The report indicates that Souza, who was hit by the bullet that fired the day of the incident, recalled Hannah Gutierrez-Reed standing over him apologizing. ~~He identified her as the person on set responsible for firearms, and that guns are to be checked by the armorer (Gutierrez-Reed) and the First Assistant Director (Halls).~~

b. Hannah Gutierrez-Reed (armorer)

The report indicates that Gutierrez-Reed stated that she was the armorer on set and that she loaded the firearm involved in the incident. Gutierrez-Reed stated that she handed the firearm off to Dave Halls before the incident. She also stated that the dummy rounds were provided to her by Seth Kenny, who, in turn borrowed them from someone else.

c. Sarah Zachry (prop master)

The report indicates that Zachry thought there were additional live rounds in the box of ammunition that Gutierrez-Reed used the day of the incident, and that Gutierrez-Reed had brought ammunition from another set she had worked on. Zachry identified the origin of some of the ammunition on the set as from Seth Kenny and Billy Ray.

d. Dave Halls (first assistant director)

The report indicates that Halls stated he was the safety coordinator and that the armorer was Hannah Gutierrez-Reed. He explained that he would routinely check firearms with the armorer, but that, the day of the incident, there was a 5-minute gap between when he checked the revolver at issue was empty and when Gutierrez-Reed returned, having loaded what he understood to be dummy rounds in the revolver. He recalled seeing three depressed primers.

e. Reid Russel (camera man)

The report states that Reid reported that Mr. Baldwin was “really safe” on set, including asking to move a child actor away from gunfire.

f. Jensen Ackles (actor)

The report indicates that Ackles explained that it is not the job of an actor to check their own firearms. Ackles also reported that he had not seen Baldwin handle firearms in a reckless manner on the set, and that, the time of the incident, he had heard Halyna Hutchins tell Mr. Baldwin to "show her the action" just before the fatal shot fired.

g. Ross Addiego (electrical)

The report indicates Mr. Addiego heard that Gutierrez-Reed say that the firearm was clear, but also that she did not check it after lunch and before the rehearsal began in the church.

The report also summarizes information obtained from the cell phones of Sarah Zachry and Seth Kenney:

h. Sarah Zachry cell phone report

Summary of text messages related to the incident found on Sarah Zachry's phone.

i. Seth Kenney cell phone report

Summary of text messages related to the incident found on Seth Kenney's phone.

The report also contains statements regarding the potential origin of the live ammunition on set:

j. Katya Luce

Summary of statements from Katya Luce related to statements she overheard by one of the wranglers on set.

Document No. 7: Text messages between Sarah Zachry and Seth Kenney

This document contains excerpts of text messages exchanged between Sarah Zachry, the film's prop master, and Seth Kenney, the ammo supplier for the production. The messages reflect that the film's armorer, Hannah Gutierrez-Reed, failed to follow proper safety protocols on the set of *Rust* and a previous film project.

Document No. 8: Text messages between Hannah Gutierrez-Reed and Seth Kenney

This document contains excerpts of text messages exchanged between Hannah Gutierrez-Reed, the film's armorer, and Seth Kenney, the ammo supplier for the production. The messages reflect that Gutierrez-Reed failed to follow proper safety protocols on the set of *Rust* and was negligent in her handling and storage of firearms and ammunition. The messages also contain evidence that Ms. Gutierrez-Reed went "target shooting" with the driver of the prop truck the night before the fatal incident. The messages also contain evidence that Dave Halls, the first assistant director, did not follow safety protocols on set.

Document No. 9: Industry Wide Labor-Management Safety Bulletin No. 1

This document contains guidelines for the proper handling of firearms and ammunition on film sets, including that the Prop Master and First Assistant Director are responsible "for obtaining, maintaining and handling all firearms for the production" and that "the production's designated Safety Representative [is] to assure that" the safety protocols are adhered to. The Bulletin also states that actors must be "allowed to" (but are not required to) witness the loading of firearms, and that firearms must be checked by the prop master or weapons handler "before each use."

Document No. 10: Crew Letter

The letter, signed by many of the cast and crew, refutes that the set of *Rust* was inherently unsafe, or that it was an unpleasant environment. It notes that producers were supportive of the cast and crew.

Document No. 11: Video Clip from *Rust* Set

This video depicts Mr. Baldwin being attentive to safety on set, and specifically shows him asking a cast member to move to another position so that he is not in the line of fire in a scene involving blanks.

Document No. 12: Video Clip from *Rust* Set

This video depicts Mr. Baldwin being attentive to proper firearm handling on set, and specifically shows him asking that a blanket be placed on the ground where he will have to throw a revolver in the scene so that the firearm is not thrown in the dirt.

Document No. 13: Video Clip from *Rust* Set

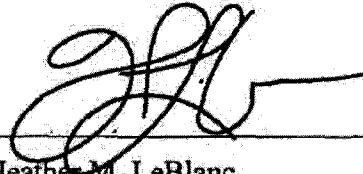
This video depicts Mr. Baldwin being attentive to safety on set, and specifically shows him halting a scene due to unstable footing for the camera crew.

Document No. 14: Halls Pröffer Transcript

The transcript reflects that Mr. Halls was in charge of safety on the set of *Rust* and that he worked with armorer Gutierrez-Reed to ensure the safety of firearms used on set. He explains that Gutierrez-Reed loaded the firearm with dummies in between the time Halls checked it with her,

and that he did not check it thoroughly, though that had been his past practice. The transcript further reflects that no member of the case or crew could have anticipated the presence of live ammunition in the firearm or anywhere on the set.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'H. LeBlanc', written over a horizontal line.

Heather M. LeBlanc

Attorney at Law

Date Submitted: November 14, 2023

EXHIBIT 12

ENDORSED
First Judicial District Court

JAN 11 2024



Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

IN THE MATTER OF THE GRAND JURY

No.: D-101-GJ-2023-00008

STATE OF NEW MEXICO,
Plaintiff,

v.

ALEXANDER RAE BALDWIN III,
Target.

**ORDER GRANTING IN PART AND DENYING IN PART STATE'S MOTION TO
EXCLUDE TARGET'S REQUESTED ELEMENTS INSTRUCTIONS TO THE GRAND
JURY**

THIS MATTER came before the Court on the State's Motion to Exclude Target's Requested Elements Instructions to the Grand Jury (the "Motion"), filed December 1, 2023. Having reviewed the briefing and being otherwise fully advised, THE COURT FINDS, CONCLUDES, AND ORDERS:

PROCEDURAL SUMMARY

1. On December 1, 2023, the State filed its Motion. In response, on December 15, 2023, Target Alexander Rae Baldwin III filed his Response to State's Motion to Exclude Baldwin's Requested Elements Instructions to the Grand Jury. In turn, on December 20, 2023, the State filed its Amended Reply to Target's Response to State's Motion to Exclude Baldwin's Requested Elements Instruction to the Grand Jury.
2. On January 11, 2024, the Court held a remote hearing to verbally announce its decision. Ms. Kari Morrissey and Mr. Jason Lewis, Special Prosecutors, appeared on behalf of the

State. Mr. Luke Nikas, Mr. Alex Spiro, and Ms. Heather LeBlanc, Attorneys for Target Baldwin, appeared on behalf of the Target.

3. The Court exercises its discretion to rule on the filed pleadings without considering oral argument. *See* Rule LR1-305(D) NMRA; *see also* Rule 5-302.2(C)(4) NMRA (regarding a motion on the target's proposed evidence or defenses, while the Court "may convene a hearing," the Court must "give the prosecuting attorney clear direction on how to proceed before the grand jury, making a record of the decision").

ANALYSIS

4. The State's Motion makes three primary arguments. First, the State asserts that "the target does not have a right at this stage in the process to determine what instructions and definitions are provided to the Grand Jury." Mot. 2. Second, the State contests the Target's requested addition to UJI 14-231 NMRA and UJI 14-133 NMRA to reflect that the "criminal negligence standard requires the prosecution to show that Mr. Baldwin had subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition." *See* State's Expedited Mot. to Preclude Target's Requested Testimony and Evidence Before the Grand Jury, Ex. 2 at p. 1; Mot. 5. Third, the State disagrees with, or at least does not address, a proximate cause instruction requested by the Target. The Court addresses these issues below.
5. Regarding the State's first argument, the Court disagrees with the State. Rule 5-302.2(C)(3) NMRA provides, "If the target submits written notice to the prosecuting attorney of exculpatory evidence . . . , or a relevant defense, the prosecuting attorney shall alert the grand jury to the existence of the evidence." Further, Rule 5-302.2(D)(1) NMRA states, "The prosecuting attorney who is assisting the grand jury shall provide the grand

jurors with instructions setting forth the elements of each offense being investigated and the definitions of any defenses raised by the evidence.” Thus, to the extent that a target notices the prosecution to a relevant defense, and a jury instruction relates to the noticed defense, the Court concludes that the target may raise objections to any proposed jury instructions that bear on the noticed defense. *Cf. State v. Trammel*, 1983-NMSC-095, ¶ 6, 100 N.M. 479 (“Furthermore, we have determined that when there is evidence to support a finding of every element of a defense, an instruction on that defense is required.” (citation omitted)); *see generally State v. Bradford*, 2013-NMCA-071, ¶ 4, 305 P.3d 975 (“[T]he remedy for a failure to advise the grand jury of the essential elements is a dismissal of the charges without prejudice.” (citation and quotation marks omitted)). Therefore, the Court denies the Motion to the extent it argues that the Target may not take issue with instructions to the grand jury that bear on relevant defenses.

6. Regarding the State’s second argument, the Court agrees with the State. “When a uniform jury instruction exists, that instruction must be used without substantive modification.” *State v. Caldwell*, 2008-NMCA-049, ¶ 24, 143 N.M. 792 (citation omitted). In addition, fundamental error exists when the instruction given “differ[s] materially from the uniform jury instruction, . . . omit[s] essential elements, . . . or [is] so confusing and incomprehensible that a court cannot be certain that the jury found the essential elements under the facts of the case.” *Id.* (internal citations and quotation marks omitted).
7. Here, the Target proposes to supplement UJI 14-231 NMRA and UJI 14-133 NMRA such that “the State [must] describe the danger or risk of which [the Target] supposedly should have known” vis-à-vis element nos. 2 and 3 of UJI 14-231 NMRA. *See Resp. 3.* Specifically, the Target contends that “the grand jurors should first be instructed that the

criminal negligence standard requires the State to prove that Baldwin had subjective knowledge of an actual risk or danger to Hutchins' life," Response 4; and, the "grand jury should next be instructed that, in order to indict Baldwin, the State must prove that Baldwin was aware of the specific risk at issue—the risk that the gun was likely loaded with live ammunition—and that he willfully disregarded this risk by following Hutchins' direction to point the gun toward the camera," Response 4-5.

8. The Target's requested instructions materially differ from UJI 14-231 NMRA and UJI 14-133 NMRA. *See Caldwell*, 2008-NMCA-049, ¶ 24. Therefore, the Court grants the State's requested exclusion of the Target's proffered criminal negligence standard instructions.
9. Regarding the State's third argument, the Court acknowledges that the State conceded in its Amended Reply that it "will present [UJI] 14-251 NMRA for the grand jury's consideration concerning proximate cause." Am. Reply 7. However, the Target requested that the State provide both UJI 14-251 NMRA and UJI 14-252 NMRA to the grand jury, Response 6-8; and, the State's Amended Reply is silent on the State's position vis-à-vis UJI 14-252 NMRA.
10. Given this silence, the Court cautions the State that it must provide UJI 14-252 NMRA if the evidence supports its provision to the grand jury. *See Use Notes to UJI 14-252 NMRA* ("For use in conjunction with UJI 14-251 NMRA when there is evidence of negligence by another person. This instruction may be modified and used as appropriate in non-homicide cases."); *State v. Trammel*, 1983-NMSC-095, ¶ 6, 100 N.M. 479 ("Furthermore, we have determined that when there is evidence to support a finding of every element of a defense, an instruction on that defense is required." (citation omitted)); *see also Herrera v. Sanchez*, 2014-NMSC-018, ¶ 28, 328 P.3d 1176 ("Our grand jury statutes require the prosecuting

attorney to act in a fair and impartial manner at all times during grand jury proceedings, including when instructing the grand jury on the applicable law. . . . By adhering to instructions modeled on the Uniform Jury Instructions promulgated by [the N.M. Supreme Court], the prosecuting attorney can avoid improper statements and fulfill the dual obligations of protecting not only the public interest but also the rights of the accused.” (internal citations omitted, quotation marks omitted, additional text omitted)).

CONCLUSION

IT IS THEREFORE ORDERED that the State’s Motion to Exclude Target’s Requested Elements Instructions to the Grand Jury is hereby GRANTED IN PART and DENIED IN PART.

IT IS HEREBY ORDERED.



T. GLENN ELLINGTON
DISTRICT COURT JUDGE
DIVISION VII

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date of acceptance for filing a true and correct copy of the foregoing was emailed to counsel for the parties as listed below.

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Trial Court Administrative Assistant

EXHIBIT 13

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

STATE OF NEW MEXICO,

Plaintiff,

vs.

D-0101-GJ 2023-00008

ALEXANDER RAE BALDWIN,

Defendant.

**EXPEDITED MOTION TO PERMIT STATE TO
CONDUCT VOIR DIRE OF GRAND JURY VENIRE**

COMES NOW the State of New Mexico, through special prosecutors Kari T. Morrissey and Jason J. Lewis, and moves the Court for entry of an order permitting the special prosecutors to conduct a limited voir dire of the grand jury venire. In support of this motion, the State submits the following:

1. The target, Alexander “Alec” Rae Baldwin, III, is a well-known movie and television actor who was in Santa Fe, New Mexico filming the movie “Rust” when the incident that is the subject of the grand jury presentation occurred.

2. Because the incident occurred on a movie set and involved a well-known actor, the incident has been the subject of hundreds, if not thousands, of local, national, and international news stories.

3. The incident has been covered by the Santa Fe New Mexican, the Albuquerque Journal, and the three major local television news stations, KOB, KOAT, and KRQE, resulting in

a significant amount of information - some of it inaccurate or incomplete - being made available to prospective jurors.

4. As a matter of fairness to both the State and the target, the State requests to conduct a limited voir dire of prospective jurors to ensure that exposure to news stories or other information about the target has not biased any juror for or against either party.

5. The State proposes the following questions, with follow-up, as appropriate:

a. Have you seen any information about the shooting of Halyna Huthcins and Joel Souza on the set of the movie “Rust” in the media (online or paper) or on social media?

b. If so, was there anything about the media coverage that you saw or read that would cause you to be unable to be fair and impartial in the determination of probable cause in this case?

c. Do you know who Alec Baldwin is? How many of you have seen a movie or TV show that he was in? Is there anything that you've seen or read that would prevent you from being fair or impartial to Mr. Baldwin?

d. Was there anything about the media coverage that you saw or read that caused you to form any opinions about whether or not Mr. Baldwin should or should not be criminally prosecuted?

e. Have you posted anything about his incident on the internet or responded online to any media or social media stories about the incident?

f. Is there any reason you cannot be fair to the target and fair to the State when making a determination of probable cause in this case?

6. The State sought opposing counsel's position on this motion but did not receive a response as of the time of the filing of this motion.

For the foregoing reasons, the State respectfully requests the Court enter an order permitting it to conduct a limited voir dire of the grand jury venire consisting of the questions, and appropriate follow up questions, identified in this motion.

RESPECTFULLY SUBMITTED,

/s/ Kari T. Morrissey

Kari T. Morrissey

Jason J. Lewis

Special Prosecutors for the State of New Mexico

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I hereby certify that a true and correct copy of the foregoing pleading was emailed to opposing counsel this 1st day of November 2023.

/s/ Kari T. Morrissey

Kari T. Morrissey

EXHIBIT 14

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

STATE OF NEW MEXICO

Plaintiff,

vs.

ALEXANDER RAE BALDWIN III,

Target.

No. D-0101-GJ 2023-00008
Judge T. Glenn Ellington

**ALEC BALDWIN'S RESPONSE TO STATE'S EXPEDITED MOTION TO
PERMIT STATE TO CONDUCT VOIR DIRE OF GRAND JURY VENIRE**

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Fax: 737-667-6110
johnbash@quinnemanuel.com

Counsel for Alec Baldwin

Target Alec Baldwin respectfully submits this opposition to the State’s Expedited Motion to Permit State to Conduct Voir Dire of Grand Jury Venire. While Baldwin agrees that there is a serious risk of a biased venire, especially given the State’s conduct to date, the State’s proposed process is insufficient and risks compounding the potential prejudice. Accordingly, Baldwin requests that the Court deny the Motion as presented, convene a conference to discuss appropriate procedures to protect his due process rights, and proceed by written questionnaire and according to the procedures outlined below.

INTRODUCTION

The State seeks to conduct a one-sided voir dire of the grand jury venire, citing “hundreds, if not thousands, of local, national, and international news stories” “resulting in a significant amount of information - some of it inaccurate or incomplete - being made available to prospective jurors.” (Mot. ¶¶ 2-3.) The State neglects to mention that these “hundreds” or “thousands” of news stories containing “inaccurate or incomplete” information are primarily the result of a deliberate, improper, and highly prejudicial press campaign *conducted by the State*, through which the State repeatedly proclaimed Baldwin’s responsibility for Hutchins’ tragic death. The State’s request comes on the heels of its previous motion to impermissibly shorten Baldwin’s time to prepare exculpatory evidence for the grand jury’s consideration. Together, the State’s motions reflect the Special Prosecutors’ intent to conduct this proceeding in a needlessly rushed and unusual manner, without regard for truth, justice, or basic rules governing criminal prosecutions.

The State’s conduct in recent weeks continues its troubling pattern of seeking to prejudice Baldwin. On October 5, 2023, six months after dismissing its case against Baldwin, the State informed Baldwin’s counsel that it was offering Baldwin a plea deal—a plea to a petty misdemeanor, identical to that accepted by Dave Halls (the First Assistant Director and principal

safety officer on set)—and gave Baldwin until October 27, 2023, to accept. Ten days before that deadline, the Special Prosecutors abruptly reversed course and informed Baldwin’s counsel that they would proceed to a grand jury. On October 25, 2023, the Special Prosecutors served a target notice on Baldwin that omitted the standard 48-hour timeline to submit a grand jury alert letter—a move they acknowledged was unprecedented—while at the same time offering to “work with” Baldwin in regards to timing. When Baldwin’s counsel responded by asking if the State was “willing to discuss a reasonable schedule for this process” given the volume of evidence and number of witnesses, the Special Prosecutors refused to engage and immediately asked the Court to approve their impermissibly shortened timeline.

In support of that request, the Special Prosecutors argued that Baldwin “does not need” the full time afforded by New Mexico law to prepare exculpatory evidence for the grand jury’s consideration because Baldwin has been provided “continuously updated discovery since March 9, 2023” and has “had access to nearly all the discovery in this case for the last eight months.” These representations were not true. The Special Prosecutors have not provided Baldwin with any evidence since March. And they know that. The State expressly informed Baldwin’s counsel in March that the file links they provided were to “produc[e]” the discovery they had conducted (not to provide future discovery), which Baldwin therefore accessed only one time in March 2023.¹ (*See, e.g.*, Ex. 1.) Baldwin even told the State in a videoconference in mid-October, before they filed any of their motions, that Baldwin hadn’t received the information they collected since

¹ The State also knows that Baldwin was unable to download the folders provided by the State because the folders were corrupt. To access the folders, Baldwin mailed a USB drive to the State, to which the State uploaded the discovery it had obtained as of March. (*See* Ex. 2.) The State never informed Baldwin or his counsel that those folders would be continually updated after the State’s dismissal of charges in April, and even if it had, the State *knew* Baldwin was unable to download those materials from the State’s platform.

March. Yet each day, Baldwin learns about more information the State has not disclosed, including recordings of over a dozen substantive witness interviews that have apparently been conducted.

Now, the State seeks to conduct a one-sided voir dire of the grand jury venire, without any acknowledgement that the State's own prejudicial media campaign is one of the key reasons such a voir dire is necessary. How can the State be trusted to conduct this process properly when the State's own conduct created the need for it in the first place? And how can the State be trusted to elicit any potential biases when the State's efforts to shorten Baldwin's time to submit exculpatory evidence to the grand jury, as well as its unreasonably rushed process to secure an indictment, suggest its lack of consideration for Baldwin's rights? The simple answer is that it can't. In these circumstances, the voir dire should be conducted by giving the grand jurors a written questionnaire and then having the Court conduct follow-up questioning to vet the grand jurors for potential bias.

ARGUMENT

I. THE STATE SHOULD NOT BE PERMITTED TO BENEFIT FROM ITS OWN UNSEEMLY PRESS CAMPAIGN THROUGH A PREJUDICIAL, ONE-SIDED VOIR DIRE OF THE GRAND JURY VENIRE

The State's motion correctly observes the substantial national and local press coverage of this case, and, specifically, of Baldwin's role in the tragic events of October 21, 2021. (Mot. ¶¶ 2-3.) What it fails to acknowledge, however, is that the media environment surrounding the incident—particularly the coverage that has been most damaging to Baldwin—is primarily the result of the State's own highly unusual and improper press campaign. *See* N.D.A.A. Nat'l Prosecution Standard 2-14.2 (“The prosecutor should refrain from making extrajudicial comments before or during trial that promote no legitimate law enforcement purpose and that serve solely to heighten public condemnation of the accused.”); *id.* 2-14.2 (“Prior to and during a criminal trial the prosecutor should not make any public, extrajudicial statement that has a substantial likelihood of materially prejudicing a judicial proceeding.”).

On January 19, 2023, District Attorney Carmack-Altwies and the unconstitutionally appointed special prosecutor, Andrea Reeb, issued a press release announcing that they planned to charge Baldwin with two counts of involuntary manslaughter, plus a sentencing enhancement for the use of a firearm.² The press release stated that “[t]he firearm enhancement makes the crime punishable by a mandatory five years in jail.”³

Less than an hour after charges were announced, Carmack-Altwies appeared on CNN and discussed “key pieces of evidence” with a reporter from the Santa Fe New Mexican.⁴ During the program, Carmack-Altwies asserted that Baldwin “had a duty to make sure the set was safe” and he “should have checked that gun, checked those projectiles.” *Id.* Later that same day, Carmack-Altwies and Reeb appeared on Jeanine Pirro’s program on Fox News, stating that “it was not a safe set” and asserting that it was Baldwin’s responsibility to ensure the set’s safety.⁵ In the same interview, Reeb stated that a lab report confirmed that “definitely the trigger was pulled,”⁶ and

² “News release from DA Mary Carmack-Altwies on charges against Alec Baldwin, Hannah Gutierrez-Reed,” SANTA FE NEW MEXICAN (Jan. 19, 2023), https://www.santafenewmexican.com/news-release-from-da-mary-carmack-altwies-on-charges-against-alec-baldwin-hannah-gutierrez-reed/article_f843a8fc-9814-11ed-9526-032214a2e9cb.html.

³ That was false. The firearm enhancement was not enacted until *after* the incident. Therefore, the State’s inclusion of the enhancement in the criminal complaint violated the *ex post facto* clause of the Constitution.

⁴ “Santa Fe DA explains decision to charge Alec Baldwin over ‘Rust’ shooting,” CNN (Jan. 19, 2023), <https://www.cnn.com/videos/us/2023/01/19/santa-fe-district-attorney-mary-carmack-altwies-rust-movie-set-shooting-charges-campbell-intv-ath-vpx.cnn>.

⁵ “Alec Baldwin prosecutors reveal evidence that led to charges,” FOX NEWS (Jan. 19, 2023), <https://www.foxnews.com/video/6318931263112>. Carmack-Altwies also disparaged Baldwin and his counsel, falsely accusing Baldwin of deleting information from his phone—a claim she knew was false at the time because Baldwin’s counsel had guided the prosecution team to the messages they originally had been unable to locate and falsely claimed were deleted.

⁶ Reeb omitted that the same lab report referred to testing in which the FBI intentionally broke the firearm at issue by hitting it repeatedly with a rawhide mallet—without first inspecting or documenting the condition of the firearm—thereby preventing the defense from inspecting the condition of the firearm when it discharged or conducting any of its own testing. She also failed

made false assertions about Baldwin’s mental state, including that “Baldwin knows everything that goes on the set,” including concerns brought to “management.” *Id.* In yet another interview with NBC News, Reeb commented on Baldwin’s ultimate guilt, stating that he “is somebody who committed a crime.”⁷ Carmack-Altwies repeated factual conclusions about the evidence, directly rejecting Baldwin’s claim that he didn’t squeeze the trigger: “That’s not true . . . [w]e know from the FBI report that he pulled that trigger.” *Id.* On January 21, 2023, Reeb appeared on yet another television program—this time, with Sean Hannity—where she commented on both the contents of the FBI reports and Baldwin’s prior statements, noting that “all those statements” “would be admissible” and would be “used against” Baldwin.⁸ In these national media appearances, Carmack-Altwies and Reeb repeatedly stated that Baldwin was facing many years in prison if convicted. Disturbingly, private messages between Carmack-Altwies and Reeb revealed that Reeb was eager to be involved in a public press strategy against Baldwin to promote herself and her political campaign for a seat in the New Mexico House of Representatives. (*See* Ex. 3 (“I . . . won’t talk to the press and will leave that all to you Mary. At some point though, I’d at least like to get out there that I am assisting you....as it might help in my campaign lol.”).) Those same messages reveal that Carmack-Altwies was willing to assist Reeb with her mission. (*Id.* (“I am intending to either introduce you or send it in a press release when we get the investigation!”).)

to mention “informal testing” that the District Attorney conducted in February 2022, which demonstrated that Baldwin’s claim not to have pulled the trigger was plausible.

⁷ “Prosecutors say they knew early in the probe that the fatal ‘Rust’ shooting would lead to charges,” NBC NEWS (Jan. 19, 2023), <https://www.nbcnews.com/news/us-news/prosecutors-say-knew-early-probe-fatal-rust-shooting-lead-charges-rcna66575>.

⁸ “‘Someone’s political party has never been an issue on why we charge somebody’: ‘Rust’ case special prosecutor,” FOX NEWS (Jan. 21, 2023), <https://www.foxnews.com/video/6319006222112>.

Most recently, one of the current Special Prosecutors, Kari Morrissey, continued the State's improper press campaign. On October 17, 2023, *The New York Times* published an article revealing that Morrissey had conducted an interview with the *Times* about the case, in which she revealed publicly that the State would present this matter to the grand jury and also discussed the case at length.⁹ This latest interview generated yet another round of press coverage that was damaging to Baldwin.

The State now seeks to benefit from its own improper press campaign, requesting permission to conduct a one-sided, live voir dire of the grand jury venire, at which the State proposes to ask certain questions of the venire, and, apparently, influence which grand jurors are fit to serve. The Court should deny the State's motion. Instead, the Court should adopt the following approach to conduct the voir dire and protect Baldwin's rights.

First, the questions for the venire should also include questions proposed by the defense, and, in particular, the following:

1. Are you aware of any comments about this case made by prosecutors (current or former) regarding Mr. Baldwin's responsibility for Ms. Hutchins' death? If yes, what were those comments?
2. Are you aware of or have you seen any report(s) or commentary by industry experts related to industry standards governing the use of firearms on set? If so, what is the content of those reports or commentary?
3. Are you aware of or have you seen any report(s) or commentary by industry experts related to the legal standard for criminal liability in accidents involving firearms on set? If so, what was the content of those reports or commentary?
4. Are you aware of any comments about this case made by prosecutors (current or former) regarding Mr. Baldwin's role and responsibilities in connection with the Rust movie set? If so, what were those comments?

⁹ See Julia Jacobs, "Grand Jury Will Consider New Manslaughter Case Against Alec Baldwin," N.Y. TIMES, October 17, 2023, <https://www.nytimes.com/2023/10/17/arts/alec-baldwin-grand-jury-rust.html>.

5. Are you aware of any comments about this case made by prosecutors (current or former) regarding who has the responsibility to check for live rounds in any firearms handled on set? If so, what were those comments?
6. Are you aware of any comments about this case made by prosecutors (current or former) regarding who has the responsibility to ensure the safety of prop weapons on set? If so, what were those comments?
7. Are you aware of any comments about this case made by prosecutors (current or former) regarding whether Mr. Baldwin had responsibility for safety conditions on set?
8. Have you watched any coverage of this case on CNN, Fox News, NBC News, ABC News, YouTube, or any other television stations or media sites? If so, which broadcasts have you watched for coverage of this case?
9. Have you read any coverage of this case in The Santa Fe New Mexican, Albuquerque Journal, Hollywood Reporter, USA Today, The New York Times, Daily Mail, Rolling Stone, Washington Post, Variety, or any other print media outlets? If so, which media outlets have you followed for coverage in this case?
10. Do you own a gun? If so, have you done gun safety training?
11. Do you have any experience with the film industry? Do you have views on whether actors should be handling weapons?
12. Do you have an opinion about whether actors should be responsible for the safety of firearms on movie sets?
13. Do you think that firearms can ever be used safely on a movie set?
14. Do you have an opinion about actors in general? Do you like or dislike them?
15. Do you have an opinion about Hollywood generally? Do you feel positive or negative about it?
16. Do you think that someone should be held criminally responsible for the death of Halyna Hutchins?
17. Do you think that someone should always be held criminally responsible for any death resulting from a firearm?
18. Do you have any familiarity with revolvers? In what context?
19. Do you have any law enforcement experience?
20. Have you ever been part of a homicide investigation? Do you have a view as to how the investigation in this case proceeded? What is that view?

21. Do you have a strong opinion about Alec Baldwin as a person? If so, what is your opinion and what is it based on? Is it possible that your opinion of Mr. Baldwin will influence your judgment of this matter?
22. Do you have a belief at this time about Mr. Baldwin's guilt or innocence in this matter? If so, what is your belief and what is it based on?
23. Do you have any personal feelings about the State's prosecution of this case?
24. Do you have a feeling about what you would like to see happen with this case? If so, what?

Second, the questions asked of the venire should be presented in a written survey, and the returned surveys should be provided to the Court, the State, and Baldwin so both the State and Baldwin can submit written objections to individual venire members. These objections should be resolved by the grand jury judge. To the extent additional questioning of any venire member is warranted by the survey responses, the grand jury judge should ask those questions, not the State. The grand jury judge should then determine whether any of the grand jurors have a potential bias that compromises their ability to treat Baldwin fairly.

In short, the State's highly improper press campaign has focused almost exclusively on Baldwin, which has created significant negative publicity. The State has singled out Baldwin for disparate treatment at every turn. The State continues that treatment here, seeking to tilt the grand jury process against Baldwin by proposing to vet the grand jury for potential bias created by its own conduct. Everyone knows that the fox should not be permitted to guard the henhouse. The voir dire should be conducted through a written questionnaire and then through follow-up questioning conducted by the grand jury judge, who should then strike any grand jurors who cannot carry out their responsibilities in accordance with New Mexico law.

CONCLUSION

For the above reasons, Baldwin respectfully requests that the Court deny the State's Expedited Motion to Permit State to Conduct Voir Dire of Grand Jury Venire. Baldwin requests that the Court instead conduct the voir dire according to the procedures outlined above.

November 7, 2023

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: /s/ Luke Nikas
Luke Nikas (admitted *pro hac vice*)
Alex Spiro (admitted *pro hac vice*)
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New York, NY 10010
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LEBLANC LAW LLC

Heather M. LeBlanc
823 Gold Ave. SW
Albuquerque, NM 87102
Tel: 505-331-7222
heather@leblanclawnm.law

Counsel for Alec Baldwin

EXHIBIT 1

From: Shadrick Bowe <SBowe@da.state.nm.us>
Sent: Monday, March 13, 2023 3:15 PM
To: Luke Nikas; Alex Spiro; Sara Clark
Cc: Heather LeBlanc
Subject: Rust Discovery Share access

Follow Up Flag: Flag for follow up
Flag Status: Flagged

[EXTERNAL EMAIL from sbowe@da.state.nm.us]

Good afternoon Luke / Alex / Sara,

You'll be receiving an email from the FJDA producing Rust Discovery.

Please let me know if you have any issues with connecting to the share.

Thank you & Best regards,
Shad

Shadrick Bowe
Program Administrator, First Judicial District Attorney
327 Sandoval Street | Santa Fe, NM 87501
505-428-6927
sbowe@da.state.nm.us

||

EXHIBIT 2

From: Shadrick Bowe <SBowe@da.state.nm.us>
Sent: Friday, March 24, 2023 6:54 PM
To: Sara Clark; Heather LeBlanc
Cc: Mary Carmack-Altwhies; Cristina Zuniga
Subject: RE: NM v. Baldwin - Discovery
Attachments: RustDiscovery2.csv

[EXTERNAL EMAIL from sbowe@da.state.nm.us]

Hi Sara,

I have finished the downloads and imports to your USB sticks. There is one additional item of discovery, lapel camera footage, that I can add to your USB stick or just send the stick as-is.

Attached is the full list of discovery in OneDrive that's been shared with you reflecting the path and, on both USB sticks, I also included the same file as it pertains to the drive letter and path too.

Thank you & Best regards,
Shad

Shadrick Bowe
Program Administrator, First Judicial District Attorney
327 Sandoval Street | Santa Fe, NM 87501
505-428-6927
sbowe@da.state.nm.us

From: Sara Clark <saraclark@quinnemanuel.com>
Sent: Thursday, March 23, 2023 11:01 AM
To: Shadrick Bowe <SBowe@da.state.nm.us>; Heather LeBlanc <heather@leblanclawnm.com>
Cc: Mary Carmack-Altwhies <MCarmack-Altwhies@da.state.nm.us>; Cristina Zuniga <cristinazuniga@quinnemanuel.com>
Subject: RE: NM v. Baldwin - Discovery

Thank you. Much appreciated.

Sara Clark
Associate,
Quinn Emanuel Urquhart & Sullivan, LLP

711 Louisiana Street, Suite 500
Houston, TX 77002
713-221-7010 Direct
713.221.7000 Main Office Number
210.857.8499 Cell
713-221-7100 FAX
saraclark@quinnemanuel.com
www.quinnemanuel.com

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From: Shadrick Bowe <SBowe@da.state.nm.us>
Sent: Thursday, March 23, 2023 12:00 PM
To: Sara Clark <saraclark@quinnemanuel.com>; Heather LeBlanc <heather@leblanclawnm.com>
Cc: Mary Carmack-Altwhies <MCarmack-Altwhies@da.state.nm.us>; Cristina Zuniga <cristinazuniga@quinnemanuel.com>
Subject: RE: NM v. Baldwin - Discovery

[EXTERNAL EMAIL from sbowe@da.state.nm.us]

Good morning Sara,

I received both drives and working on adding that data right now. Planning on shipping back out again today.

I'll have that itemized list ASAP.

Thank you & Best regards,
Shad

Shadrick Bowe
Program Administrator, First Judicial District Attorney
327 Sandoval Street | Santa Fe, NM 87501
505-428-6927
sbowe@da.state.nm.us

From: Sara Clark <saraclark@quinnemanuel.com>
Sent: Thursday, March 23, 2023 10:44 AM
To: Shadrick Bowe <SBowe@da.state.nm.us>; Heather LeBlanc <heather@leblanclawnm.com>
Cc: Mary Carmack-Altwhies <MCarmack-Altwhies@da.state.nm.us>; Cristina Zuniga <cristinazuniga@quinnemanuel.com>
Subject: RE: NM v. Baldwin - Discovery

Hi Shad,

Checking on the disclosure list. Can you give us an update?

Best,
Sara

Sara Clark
Associate,
Quinn Emanuel Urquhart & Sullivan, LLP

711 Louisiana Street, Suite 500
Houston, TX 77002
713-221-7010 Direct
713.221.7000 Main Office Number
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From: Sara Clark
Sent: Tuesday, March 21, 2023 4:29 PM
To: Shadrick Bowe <SBowe@da.state.nm.us>; Heather LeBlanc <heather@leblanclawnm.com>
Cc: Mary Carmack-Altwhies <MCarmack-Altwhies@da.state.nm.us>; Cristina Zuniga <cristinazuniga@quinnemanuel.com>
Subject: RE: NM v. Baldwin - Discovery

Hi Shad,

Further to our conversation, the drives were sent today and should arrive tomorrow morning before 10:30AM. The FedEx tracking number is 3960 2204 9310. Please let us know if there are any issues. Also, please let us know when we can expect the itemized disclosure of discovery.

Best,
Sara

Sara Clark
Associate,
Quinn Emanuel Urquhart & Sullivan, LLP

711 Louisiana Street, Suite 500
Houston, TX 77002
713-221-7010 Direct
713.221.7000 Main Office Number
210.857.8499 Cell
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From: Shadrick Bowe <SBowe@da.state.nm.us>
Sent: Monday, March 20, 2023 5:00 PM
To: Sara Clark <saraclark@quinnemanuel.com>; Heather LeBlanc <heather@leblanclawnm.com>
Cc: Mary Carmack-Altwhies <MCarmack-Altwhies@da.state.nm.us>
Subject: RE: NM v. Baldwin - Discovery

[EXTERNAL EMAIL from sbowe@da.state.nm.us]

Hi Sara and Heather,

Thank you for your time today sharing the issues you're experiencing.

Please use the following address for that flash drive (Recommend at least 512GB in size or 256GB at an absolute minimum):

First Judicial District Attorney
c/o Shadrick Bowe
327 Sandoval Street
Santa Fe, NM 87501

Thank you & Best regards,
Shad

Shadrick Bowe
Program Administrator, First Judicial District Attorney
327 Sandoval Street | Santa Fe, NM 87501
505-428-6927
sbowe@da.state.nm.us

-----Original Appointment-----

From: Sara Clark <saraclark@quinnemanuel.com>
Sent: Sunday, March 19, 2023 9:20 PM
To: Sara Clark; Shadrick Bowe
Cc: Jack Vallar; Cristina Zuniga; Heather LeBlanc
Subject: NM v. Baldwin - Discovery
When: Monday, March 20, 2023 4:00 PM-5:00 PM (UTC-06:00) Central Time (US & Canada).
Where: <https://protect-us.mimecast.com/s/XqRBC31EZLfwkBAhgXOb2?domain=quinnemanuel.zoom.us>

Sara Clark is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting
<https://quinnemanuel.zoom.us/j/2315136625>

Meeting ID: 231 513 6625

One tap mobile
+13462487799,,2315136625# US (Houston)
+19712471195,,2315136625# US (Portland)

Dial by your location

- +1 346 248 7799 US (Houston)
- +1 971 247 1195 US (Portland)
- +1 213 338 8477 US (Los Angeles)
- +1 253 215 8782 US (Tacoma)
- +1 602 753 0140 US (Phoenix)
- +1 669 219 2599 US (San Jose)
- +1 720 928 9299 US (Denver)
- +1 312 626 6799 US (Chicago)
- +1 470 250 9358 US (Atlanta)
- +1 470 381 2552 US (Atlanta)
- +1 646 518 9805 US (New York)
- +1 646 558 8656 US (New York)
- +1 651 372 8299 US (Minnesota)
- +1 786 635 1003 US (Miami)

+1 267 831 0333 US (Philadelphia)

+1 301 715 8592 US (Washington DC)

Meeting ID: 231 513 6625

Alternate Dial-in Numbers: <https://quinnemanuel.zoom.us/j/kcLW9CmpKj>

Join by SIP

2315136625@zoomcrc.com

EXHIBIT 3

Felicia M. Lujan

From: Mary Carmack-Altwies
Sent: Monday, March 6, 2023 3:27 PM
To: Felicia M. Lujan
Subject: FW: contract
Attachments: 20220609_FIRST JUDICIAL DISTRICT ATTORNEY.pdf

From: Mary Carmack-Altwies
Sent: Thursday, June 9, 2022 5:00 PM
To: Andrea Reeb <andrea@reeblaw.org>
Cc: Brenda Rael <BRael@da.state.nm.us>
Subject: Re: contract

I think we'll have to or we can redo it when we have the whole investigation.

I am intending to either introduce you or send it in a press release when we get the investigation!

Brenda - can you sign for me or use my stamp thingy?

Sent from my iPhone

On Jun 9, 2022, at 4:49 PM, Andrea Reeb <andrea@reeblaw.org> wrote:

One you have it signed, if you can scan it right back and I will email it to PERA. Thanks! I assume we redo at new physical year? Otherwise it's 22 days? I also won't talk to the press and will leave that all to you Mary. At some point though, I'd at least like to get out there that I am assisting you...as it might help in my campaign lol. Andi

EXHIBIT 15

quinn emanuel trial lawyers | new york

51 Madison Avenue, 22nd Floor, New York, New York 10010-1601 | TEL (212) 849-7000 FAX (212) 849-7100

WRITER'S DIRECT DIAL NO.
(212) 849-7228

WRITER'S EMAIL ADDRESS
lukenikas@quinnemanuel.com

January 18, 2024

VIA E-MAIL

Kari Morrissey
Jason Lewis
Special Prosecutors for the State of New Mexico
1303 Rio Grande Blvd., NW Suite 5
Albuquerque, NM 87104
ktm@morrisseylewis.com
jjl@jjllaw.com

Re: Grand Jury Proceedings

Dear Kari and Jason:

We understand that the current grand jury term expires on January 19, 2024. This schedule leaves the state with only two days to present the information in Mr. Baldwin's Grand Jury Alert Letter, consistent with your obligations under the Court's order and New Mexico law. 1978 N.M.S.A. § 31-6-11 (2021).

Based on the numerous questions you asked the Court about the logistics of completing this process within only two days, we are concerned that you will be unable or unwilling to present all the information in the Alert Letter or may attempt to circumvent your obligation to do so. We therefore write to reiterate that the State is required to present the Alert Letter in its entirety, and to completely present any information the grand jury wishes to hear, regardless of when the grand jury's term expires. Any effort to circumvent that obligation—including directly or implicitly encouraging the grand jury not to hear the information because it will prolong their term of service—would violate New Mexico law.

We are concerned at this juncture that the ability to present to this grand jury is compromised and demand that the presentation go before a new grand jury that has sufficient time to hear the necessary evidence. We reserve the right to seek to dismiss any charges that may result from your failure to comply with the above obligations, or any other circumstance that limits the grand jury's ability to hear and receive the evidence in the Alert Letter.

quinn emanuel urquhart & sullivan, llp

ABU DHABI | ATLANTA | AUSTIN | BEIJING | BERLIN | BOSTON | BRUSSELS | CHICAGO | DALLAS | DOHA | HAMBURG | HONG KONG | HOUSTON | LONDON | LOS ANGELES | MANNHEIM | MIAMI | MUNICH | NEUILLY-LA DEFENSE | NEW YORK | PARIS | PERTH | RIYADH | SALT LAKE CITY | SAN FRANCISCO | SEATTLE | SHANGHAI | SILICON VALLEY | STUTTGART | SYDNEY | TOKYO | WASHINGTON, DC | WILMINGTON | ZURICH

Sincerely,

/s/ Luke Nikas

Luke Nikas

cc: Alex Spiro, Esq.