

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

STATE OF NEW MEXICO,

Plaintiff,

v.

D-101-CR-2023-40

HANNAH GUTIERREZ,

Defendant.

**STATE'S RESPONSE TO DEFENDANT'S SENTENCING MEMORANDUM AND
REQUEST FOR CONDITIONAL DISCHARGE**

COMES NOW, the State of New Mexico, by and through Special Prosecutors, Kari T. Morrissey and Jason J. Lewis, who submit the following in response to the Defendant's Sentencing Memorandum and Conditional Discharge:

1. The State opposes the Defendant's request for a conditional discharge. While it is true that Ms. Gutierrez is eligible for a conditional discharge, the State asserts that Ms. Gutierrez should not be granted a conditional discharge because, upon her arrival in New Mexico, she swiftly committed a host of felonies and has another felony charge pending before Judge Ellington (D-101-CR-2023-418) for intentionally hiding a firearm from security at a local bar to get the firearm into the bar. Upon successfully circumventing the security at the bar she went into the restroom and made a selfie video stating "They checked my purse, but they didn't check my butt cheeks! Wah, wah , wah." At the same time that she was speaking she held up a nickel-plated semi-automatic pistol in front of the camera. There is additional evidence that has previously been presented the Court that Ms. Gutierrez was in possession of cocaine while in New Mexico and while working as the firearms expert on the set of *Rust*, yet another felony.

2. The State also opposes a conditional discharge due to Ms. Gutierrez' complete and total failure to accept responsibility for her actions as demonstrated by the summaries below of some of her calls since her incarceration on March 6, 2024. Ms. Gutierrez continues to deny responsibility and blame others. She goes so far as to blame the set medic, the paramedics who attempted to save Ms. Hutchins and even blames the child actor on set for picking up a gun. Moreover, there are references to Ms. Gutierrez being in possession of alcohol during the time that the trial was taking place and continuing to consume alcohol contrary to her conditions of release while on pretrial release with her boyfriend. Stuningly, Ms. Gutierrez requested during jail calls that her legal team request that Ms. Hutchins husband and son be contacted and asked to speak on her behalf at her sentencing. She continued to complain in her jail calls about the negative affects this incident has had on her life and her modeling career while never expressing genuine remorse at any time. She expressed a willingness to violate future Court orders should she be subpoenaed for the Baldwin trial, she referred to the jurors as "retards," "idiots," and "assholes," and suggested that her mother could confront undersigned counsel in the restroom because counsel uses the same restroom as the public. Finally, she requested that her employment history be misrepresented to undersigned counsel and the Court so it would appear as though she was working full-time prior to the trial. Surprisingly, Ms. Gutierrez doesn't seem to mind being in jail and at times appears to genuinely enjoy it.
3. The State further requests that this Court designate Ms. Gutierrez' offense a serious violent offense pursuant to NMSA 33-2-34, 1978. "[T]he amount of deductions a prisoner may earn depends on whether the crime for which the prisoner is serving his or her sentence is a "serious violent offense" or a "nonviolent offense." A prisoner serving a

sentence for a serious violent offense may only receive up to four days per month of deductions, § 33-2-34(A)(1), whereas a prisoner serving a sentence for a nonviolent offense may receive up to thirty days per month of deductions, § 33-2-34(A)(2).

Seventeen crimes, enumerated in fourteen statutory provisions, are, by definition, serious violent offenses. Section 33-2-34(L)(4)(a)-(n). We refer to these crimes as "per se serious violent offenses." Another twenty crimes, enumerated in fifteen statutory provisions, are serious violent offenses if the district court finds that "the nature of the offense and the resulting harm" of the crime under a given set of facts warrant the designation. Section 33-2-34(L)(4)(o); *see also State v. Solano*, 2009-NMCA-098, ¶ 10, 146 N.M. 831, 215 P.3d 769 (explaining that a district court must find "that the crime was committed in a physically violent manner either with an intent to do serious harm or *with recklessness in the face of knowledge that one's acts are reasonably likely to result in serious harm*" (emphasis added) (internal quotation marks and citation omitted)). We refer to these crimes as "discretionary serious violent offenses." All remaining crimes, i.e., those not designated serious violent offenses, are, by definition, nonviolent offenses. Section 33-2-34(L)(3). *State v. Montano*, 2022-NMCA-049, 2-3, 517 P.3d 267, 268, 2022 N.M. App. LEXIS 9, *2-3, 2022 WL 420681.

4. The State is requesting the serious violent offense designation due to the extreme recklessness with which Mr. Gutierrez behaved while working as the armorer on the set of *Rust*. It is clear from the digital evidence presented at Ms. Gutierrez' trial that she brought live rounds on set by failing to properly inspect the "dummy" rounds she provided to the set. Moreover, she failed to check the "dummy" rounds after providing them to the set and as a result loaded one into the gun holster being worn by Alec

Baldwin and the gun belt being worn by Jensen Ackles. She did all of this before she loaded a live round into a prop gun, told the First Assistant Director that the gun was “cold” and permitted it to be handed off to an actor to manipulate for a scene. Every time a gun was loaded with “dummy” rounds it was a game of Russian Roulette. There is ample evidence that Ms. Gutierrez was using alcohol, marijuana and cocaine in the evenings during the filming of *Rust* and may have reported to set to work while under the influence of these substances. It should be noted that on September 3, 2021, Mr. Gutierrez’ stepfather, Thell Reed, texted her “Did you find .45Colt ammo?” and then again texted “Keep looking.” This text from Ms. Gutierrez’ stepfather was not used during trial because neither Ms. Gutierrez nor her stepfather testified. This message is a clear indication that Ms. Gutierrez was attempting to obtain .45 caliber ammunition in the weeks leading up to her work on the set of *Rust*. Ms. Gutierrez was aware that the guns being used by the actors on the set were real guns and also knew that “dummy” rounds look exactly like live rounds. She certainly understood that she was responsible for checking the dummy rounds to ensure that they were inert and understood that people could be killed if a live round was placed into a prop gun.

5. The State requests that Ms. Gutierrez be sentenced to eighteen months in the department of corrections with a designation of serious violent offender due to her *recklessness in the face of knowledge that her acts were reasonably likely to result in serious harm* (the standard set forth under New Mexico law). Should the Court determine that a suspended/deferred sentence is appropriate, the State requests that the Court exercise its full probationary discretion and sentence Ms. Gutierrez to five years of probation as a condition of any suspended/deferred sentence.

Summaries of Jail Calls

10.36.101.211-2662e1e30a2465d318428bd83dde5920

Hannah says that the other girls in jail were saying that “I can’t believe they threw your pretty little white ass in here for nothing” Hannah says “Like yeah, girl for real”. She says that so far, she is built for jail and likes tap water, she likes hard beds, the cat food isn’t too bad every day.

The male says that when Hannah was taken away that mom said, “this is some bullshit”. Hannah laughs loudly. He tells her what mom did and Hannah says that she was glad her mom stood up and said something. Hannah laughs about all of this.

The male says he has been to jail before. She says she didn’t think she would like it, but now she does.

10.36.101.212-1b78300c0a2465d405a099d22dc7824e

Hannah says that she can’t believe that the judge put her in jail. Hannah talks about the jury and how they only took “two fucking hours” and how she got the book thrown at her. She says that everyone lied on the stand except for two or three experts. She talks about the witnesses and how they all lied. She says that she didn’t need to be shaking the dummies all the time.

She complains about what happened on set and says people are still going to die on set. She complains about Gabby Pickle. She complains about the jury and how people who got immunity and had pending lawsuits.

1036.101.212-2b4ce1f00a2465d405a099d239003d72

She says she wishes TMZ would shut up and that “literally she is fine”. She complains about the Washington Post and how if they talked to any worker in there, they would all say she is happy and bubbly.

10.36.101.212-357b48ab0a2465d405a099d23854c4be

She talks about being a felon and how it’s going to work with all of his guns and how she isn’t sure how it will work. She says that he can put them in a safe and he can tell them that she doesn’t know the combo.

10.36.101.212-268488da0a2465d405a099d2cb9228dec

She talks about how she is wrongly incarcerated.

After Hannah was taken into custody Hayden (the other party to the call) goes to her hotel room to clean up and Sean says “where did this bottle of Crown Royale come from” Hayden claims it and says Sean wasn’t thrilled.

10.36.101.213-2b2272d20a2465d567f62ed32f9d35a3

Hannah talks about playing games with the other inmates.

Hannah says she is fine in there. Hannah talks about suing various media outlets. Hannah goes back to TMZ and how she is built for jail.

Hannah says that if she is subpoenaed to Baldwin’s trial she will not show up. Mom says that she was held in jail for three weeks for contempt. Hannah complains that she shouldn’t be subpoenaed if Baldwin didn’t show up for her.

10.36.101.213-4a6f2967f62ed368b5e1c

The judge giving her time for no reason.

The judge isn’t fair and they are going to the supreme court.

10.36.101.215-1b6d725a0a2465d755c21751bb2bdd4c

Hannah doesn’t understand why the judge locked her up when she was on terms of release.

Hannah says she is trying to get Carmella (Jason Bowles’ paralegal) to talk to the family of Halyna about coming to sentencing to speak on her behalf.

10.36.101.215-3E16f6170a2465d755c21751d9925c0f

Hannah talks about the friends she is making and how she is having fun. She says she doesn’t want to go to prison for 13 months but it is what it is.

Hannah is saying she is having more fun in jail than he (the other party to the call) did.

10.36.215-4a4565ef0a2465d755c2175b64a922

Hannah says jail isn’t like summer camp, but it is kinda like summer camp.

10.36.101.215-4e498dff0a2465d755c217510038e999

Hannah says that everything is going to get reviewed and that she feels like people were paid off to look the other way. Hannah goes into some sort of

conspiracy theory about how she was used as a pawn. Hannah says it's not too bad in jail.

10.36.101.215-26760b580a2465d755c21751951d0f94

Hannah complains about what was allowed at trial, what wasn't allowed. Hannah says that the judge is terrible, and Kari got together with the judge and they were against her. Hannah complains about how fast the jury deliberated. Hannah says that everyone who testified was given immunity, had a lawsuit pending or was part of the problem. She calls the jury retarded. "When they says a jury of your peers they mean fuckin retards.."

10.36.101.216-347F64660a2465d867d0dab2f5709756

Hannah calls Kari a bitch and she is doing it out of spite.

Hannah thinks the judge is getting paid off and thinks she deserves credit for being respectful. She is mad because she isn't going to get bail.

10.36.101.216-26417d1d1d0a2465d867d0dab20bc953fc

She says there is a lot of nice things about jail and that it is a forced break from life.

She says that she paid a guy named Roger three thousand dollars to be her PR person. She says that Jason Bowles needs to talk to Roger to get everything out. Hannah and her mother joke about her mom getting thrown out of court and that the judge is a menace. Hannah thanks her mom for the outburst. Hannah was thinking that mom was going to be behind her getting booked into jail.

10.36.101.217-1a4fdf6d0a2465d9291098e23e4ccea

Hannah says the judge was on a power trip. Mom wants to picket the court. Hannah wants to pull in the governor and "fuck this bitch up". It's hard to know who/what she is referring to as the "bitch."

10.36.101.217-2ebe30fd0a2465d9291098e2269a6a4d

She seems happy and is talking about cutting her friends' hair. Hannah is wishing they had hula hoops in jail.

Mom recommends writing a book about this whole thing before somebody else does.

10.36.101.217-29d4ffbb0a2465d9291098e2536dddd9

Hannah says that she has already been punished for this. Carmella (Bowles' paralegal) says that she knows Hannah is sorry. Carmella says Kari is lying about everything. They blame the child on set for being dangerous on set. Hannah talks about the kid getting the gun that was "just laying on the ground". Carmella tells Hannah "I don't trust Kari to not be recording these calls.. I don't trust that bitch".

10.36.101.217-358acb550a2465d9291098e26e7961aa

Hannah says if she has to stay in jail longer that she is down for prison. Hannah says there is more to do in prison and talks about going to Springer where she could ride horses.

10.36.144.189-20aaae260a2490bd3144dc621fa5c08b

They talk about using her father's leukemia to keep her out of prison. They want to say that her and her mom are the only people who can help her dad. Hannah talks about her publicist and how it is time to make some statement from him.

10.36.101.218-210d70970a2465da069fb596b9a2977d

They talk about how it might work if Hannah says that she is the sole caretaker of her father. Hannah says jail isn't too bad and that some parts of it are just fine.

10.36.144.138-3af57027a24908a0be54d05bdeedd4e7

They talk about how Hannah can do that time standing on her head.

Hannah talks about her statement to the judge. Mom talks about the saying something to the judge and Carmella apparently told her that she can say whatever she wants at sentencing and the worst that can happen is spending a couple days in jail.

10.36.144.189-1b5dbc250a2490bd3144dc62f71dfab5

Hannah asks Carmella to reach out to Halyna's husband and son to support her at sentencing.

10.36.144.189-2a886d790a2490bd3144dc62fdce3a71

Hannah says jail is a forced vacation and that she is doing fine and if she has to spend more time in jail it will be ok.

10.36.144.189-2a9773c30a2490bd3144dc6230f0e752

Hannah says the jury didn't look at the evidence and are assholes.

Hannah says the people that testified against her just wanted to talk shit and she got railroaded. Kari lied in her closing statement. Hannah wants to go after people for libel.

Hannah is mad that whole thing got pinned on her. Hannah says that jail is good character development.

Hannah wants them to put Alec Baldwin in jail also.

10.36.144.189-20aaae260a2490bd3144dc621fa5c08b

Hannah asks mom to tell the judge about Thell's leukemia diagnosis and how she takes care of him when mom isn't there. Hannah tells her mom what to say about how she takes care of Thell.

Hannah says the jury was so fucking stupid and they couldn't tell what was happening. She calls the jury fucking idiots.

10.36.144.189-35b335ab0a2490bd3144dc62544846613

Hannah says she doesn't feel like she deserves to be there and the jail guards agree with her. Hannah thinks the judge got paid off.

10.36.144.189-263225d00a2490bd3144dc6268514fda

They talk about the call being recorded and how they need to talk about people by their names instead of "bitch."

They complain about the time the jury took to deliberate and how they didn't look at the evidence.

10.36.148.22-308209220a249416196f10f86d02c0d7

They talk about how she shouldn't be a felon and maybe they can get it knocked down to a misdemeanor. Hannah wants to bother the governor for the rest of her life so she can be pardoned. Hannah doesn't feel like she should be a felon because she has never been arrested. Hannah says the judge wanted to lock her up. Hannah and her mother talk about how the system failed her.

10.36.101.211-689AFF100A2465d33a66066e980b57ec

She is having a movie night in jail watching Frozen.

Hannah's boyfriend says that he is trying to quit smoking weed. Hannah says that she won't have anyone to smoke weed with and that she is going to smoke weed when she gets out.

10.36.101.211-59023c3b0a2465d33a66066e29bba665

Hannah's mother says that Hannah should fight the biggest girl of the bunch that is causing problems.

10.36.101.211-880633d90a2465d33a66066e18e08ffd

Mom says that she can't promise she will be calm and cool at sentencing. Mom says she is going to go in in disguise if they don't let her in. Mom says its lucky that all she did at the verdict was yell.

10.36101.2126231F5A40a2465d405a099d2a580e4ec

Hannah says she got moved to 300 and it is "Fuckin lit in here now". Hannah complains about the jail guards. Hannah was accused of passing notes to some male inmate and sparked some sort of investigation.

Hannah says she has Regina as a roommate and it is fun as fuck and not bad at all.

10.36.101.213-63cb395b0a2465d567f62ed33a94fbc4

Hannah says that she has had a good day and fun with another inmate. Hannah says it is "crazy good vibes" today and everyone is having fun because they got their commissary. Hannah talks about some new medication she got that made her loopy. She talks about working out. Hannah says she likes the new medication because it makes her feel high.

10.36.101.214-7cfb89610a2465d65b8441fdcc48b33f

Hannah complains about the jury instructions and Hannah doesn't understand why she is in there.

10.36.101.214-88158db50a2465d65b8441fd00e279d7

Hannah says that this whole thing has been a character attack on her.

10.36.101.215-8ad5c3a60a2465d755c21751bbcd3031

Hannah complains that she has all the fame of a public figure but none of the benefits. Hannah says this is all she is going to be known for. Mom asks whether or not Halyna's friends and family are going to write letters for her.

10.36.101.215-928dc3280a2465d755c217510f248e3

Hannah says she is nice and safe in jail.

10.36.101.216-5f01efee0a2465d867d0dab2a730fcf5

Hannah says that they (referring to law enforcement and the prosecution) don't even have all her supplies so how could they pin it on her and that that is reasonable doubt enough. They talk about how much of Hannah's life they could take up and that this is messing up her modeling career.

Hannah thinks the producers should be in jail. They complain about Dave Halls and how he fucked Hannah to save his own ass.

10.36.101.216-8b6827e30a2465d867d0dab21d291b95

Hannah is dismissive of the judge talking about someone dying as a result of her actions.

10.36.101.217-9768f94f0a2465d9291098e2ca06e225

Hannah talks about how she is in good spirits. Hannah says she really is fine in jail and some days she really likes it in there.

10.36.101.217-787846490a2465d9291098e2f9a0d892

Hannah says the prosecution bored the jury for nine days and when the defense put their case the jury was bored. They think that the jury must have been tampered with. They feel let down by the FBI. Hannah says if the whole thing wasn't so comical she would be upset.

10.36.101.218-8b2743810a2465da069fb596f0142f2a

Mom yells that Hannah didn't cause Halyna's death and Hannah agrees.

10.36.101.218-8d3770cd0a2465da069fb596cbf99761

Hannah and her boyfriend talk about Hannah drinking and how she is mean to him when she drinks. Based on the timeline of their relationship she had to have violated her conditions because there is another call where they talk about it being their six-month anniversary.

10.36.101.218- 8661e6670a2465da069fb5963a4a96dc

Hannah says she deserves a new trial and that this is bullshit.

10.36.144.138-59a497410a24908a0bc54d054b978f06

Hannah talks about her job at Mattress World and how she doesn't want her job back but maybe does because she will need a job. Hannah wants to get on unemployment, and she thinks that losing her job due to incarceration is the best way to get on unemployment.

10.36.144.189-95d15f0a2490bd3144dc620b57d7f2

Hannah says she should have signed the plea and then just gone on the news and denied it.

10.36.144.189-676d4ce90a2490bd3144dc6278621e4d

Hannah says she is looking at 13 months, which is ridiculous over what happened.

10.36.144.189-908390aa0a2490bd3144dc626aff3ad5

Hannah thinks the paramedics should be in jail for intubating her wrong.

10.36.144.190-8d17cd650a2490be71eeba73222843ea

Hannah says mom can also give Kari two or three of her paystubs to "shut that bitch up". Hannah tells mom to get the ones where she has 38 or 40 hours so it shows she has a full time job and not the ones that show less.

Hannah can't believe how many people are trying to ruin her.

10.36.148.22-6c9076da0a249416196f10f80d6292e1

Hannah says everyone thinks it's crazy she got locked up with her history. Hannah says that she shouldn't be in jail because she has no priors. Hannah complains that they literally put her in there with murderers. Hannah says that people have accidents and people die, it's an unfortunate part of life but it doesn't mean she should be in jail.

She says the medic on the set of Rust is a dumb bitch and should have been prepared. They talk about the paramedics taking too long and she would still be here today if they had done it right and not intubated her right. She calls the paramedics, "fucking idiots, fucking retards" Mom says, how is that on you.

10.36.148.22-59f036c20a249416196f10f8a6ea929f

Mom wonders if Kari is going to be at sentencing. Mom says, "she don't want to see me." Mom says she "don't need that bitch there" Hannah tells her that they all use the same bathroom as the public and chuckles.

Respectfully submitted,

/s/ Kari T. Morrissey

Kari T. Morrissey

Jason J. Lewis

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be delivered via E-File and Serve a true and correct copy of the foregoing pleading to all counsel and parties of record, on this 12th day of April, 2024.

/s/ Kari T. Morrissey

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