

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

**STATE OF NEW MEXICO,**

**Plaintiff,**

**vs.**

**ALEXANDER RAE BALDWIN,**

**Defendant.**

**No. D-0101-CR-2024-0013**

**Judge Mary Marlowe Sommer**

**STATE OF NEW MEXICO'S REPLY TO THE DEFENDANT'S RESPONSE TO THE  
STATE'S MOTION FOR LEAVE TO FILE A SUPPLEMENTAL RESPONSE IN  
OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THE INDICTMENT**

COMES NOW the State of New Mexico by and through its Special Prosecutors Kari T. Morrissey and Erlinda O. Johnson, who hereby respectfully submit the following reply to the defendant's response to the state's motion for leave to file a supplemental response, and in support thereof, the State submits the following:

Contrary to the defendant's argument that this Court should not grant the state leave to file a supplemental response to the defendant's motion to dismiss, the State submits that in promoting the interests of justice by permitting a case to be resolved on the merits, trial courts have discretion to grant the filing of supplemental briefing. *See Austin v. Kroger Texas LP*, 864 F.3d 326, 337 (5th Cir. 2017) (District courts "should construe the procedural rules with a preference toward resolving the case on the merits and avoiding any dismissal based on a technicality."); *Johnson v. Bd. of Regents of Univ. of Georgia*, 263 F.3d 1234, 1269 (11th Cir. 2001) ("[W]e accord district courts broad discretion over the management of pre-trial activities, including discovery and scheduling.").

It is settled law that trial courts have wide discretion in controlling their docket, legal arguments presented and motions practice before the court. *See Clinton v. Jones*, 520 U.S. 681,

706 (1997) (court has wide discretion to control its own docket); *see generally State v. Sanchez*, 120 N.M. 247, 253, 901 P.2d 178, 183 (1995)(court has wide discretion in controlling counsel’s argument to the jury); *State v. Rodriguez*, 2009-NMCA-090, ¶ 24, 146 N.M. 824, 215 P.3d 762 (“Admission of evidence is within the district court’s discretion and there is no abuse of discretion when the evidence is shown by a preponderance of the evidence to be what it purports to be.”); *State v. Trujillo*, 1982-NMSC-0145, ¶ 5, 99 N.M. 251 (“[T]he district court has discretion in determining how *voir dire* should be conducted and reversal is available only where the discretion is abused.”) Accordingly, a court acts within its wide discretion to allow a party leave to file supplemental legal argument in support of or against a motion pending before the Court.

In this case, the State sought leave of the Court to file a supplemental response in order to address the defendant’s mischaracterization of the law applicable to judicial review of matters occurring before the grand jury. Defendant argues this Court can and must review the grand jury presentation and the evidence presented to the grand jury herein. Not so. Absent a clear showing of bad faith, this court is precluded from reviewing the evidence presented to the grand jury. *See* NMSA § 31-6-11(A) 2003 (“The sufficiency of the evidence upon which an indictment is returned shall not be subject to review absent a showing of bad faith on the part of the prosecuting attorney assisting the grand jury.”) Contrary to the rancorous arguments alleging malevolent prosecutorial misconduct, propounded by defendant in his motion and reply, when distilled to their core those arguments fail to demonstrate prosecutorial bad faith in the grand jury presentation. Therefore, this Court is precluded from reviewing the evidence presented to the grand jury.

Moreover, the defendant vociferously claims the prosecution failed to present the defense submitted evidence to the grand jury and therefore, this Court must grant the requested dismissal.

That too is a mischaracterization of the law. The law merely requires the prosecution to present the target's "alert letter" to the grand jury. What the grand jury does with it is entirely up to them. The New Mexico Supreme Court observed in *Jones* that Section 31-6-11(B)'s language requires only that the grand jury be "alerted to the existence of [potentially exculpatory] evidence" offered by the target. *Jones v. Murdoch*, 2009-NMSC-002, ¶ 11, 12, 145 N.M. 273 ("Assuming that the target's offer of evidence meets the evidentiary standards set forth by statute, Section 31-6-11(B) only requires that the grand jury be alerted to its existence. We contemplate requiring nothing more.")

In his reply, the defendant misstates the Supreme Court's holding in *Herrera v. Sanchez*, 2014-NMSC-018, 328 P.3d 1176. Contrary to the defendant's arguments that *Herrera* requires dismissal in this case because the prosecutor failed to present the defendant's evidence to the grand jury, the grand jury operates independently and has the authority to determine what evidence it wants to hear. Indeed, "[o]ur 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." *Herrera v. Sanchez*, 2014-NMSC-018, ¶ 20, 328 P.3d 1176.

In *Herrera*, the prosecuting attorney ordered the target not to answer a "direct, relevant question from a grand juror," *id.* ¶ 24, and also told the grand jury that the target's testimony should not be considered because it was an impermissible attempt to make the grand jury consider the consequences of its decision to indict, which is prohibited under the grand jury instructions. *Id.* ¶ 30. The New Mexico Supreme Court held that the prosecutor's conduct violated the prosecutor's duty of fairness and impartiality under NMSA § 31-6-7(D) (2003) and "interfered with the grand jury's statutory duty to make an independent inquiry into the evidence supporting a determination of probable cause." *Herrera*, ¶¶ 24, 28, 30. Nothing about the

presentation of the evidence in Mr. Baldwin's case comes close to what occurred in *Herrera*. Only if the defense has made a showing of prosecutorial bad faith, can the court then assess the prosecutor's actions, viewed under the totality of the circumstances, in order to determine whether they prevented the jury from "mak[ing] an independent inquiry into the evidence supporting a determination of probable cause." 2014–NMSC–018, ¶ 24, 328 P.3d 1176.

In order to address the defendant's mistaken interpretation of legal authority, the State respectfully seeks leave of this Court to file a supplemental brief.

Additionally, in his reply, the defendant argues the state admitted its bad faith motives in pursuing an indictment against the defendant. In doing so, the defendant claims that the State's withdrawal of a plea offer constitutes bad faith. However, here too the defendant is mistaken. A criminal defendant has no constitutional right to a plea bargain, and the decision whether to offer a plea bargain is a matter within the prosecutor's discretion. *See United States v. Moody*, 778 F.2d 1380, 1385–86 (9th Cir. 1985). The State, through its prosecutors, has broad discretion in determining what charges to bring and whom to prosecute. *See, State v. Brule*, 1999-NMSC-026, 127 N.M. 368, 981 P.2d 782. If the prosecutor has probable cause to believe that an accused has committed a crime, the decision whether to prosecute, and what charge to file or bring before a grand jury, generally rests within the prosecutor's discretion.

In his attempt to obfuscate the law as it relates to prosecutorial discretion in extending and withdrawing plea offers, the defendant resorts to unseemly attacks on the prosecutor. It is important to note that traditionally courts do not approve of counsel's casting aspersions on opposing counsel or making accusations of misconduct without a solid foundation. *In re Moncier*, 550 F. Supp. 2d 768, 800 n.43 (E.D. Tenn. 2008). After reviewing Defendant's several filings, it is clear there is no basis for accusing the prosecutor of prosecutorial

misconduct. Accordingly, in order to properly address the defendant's unsupported arguments so that the Court has the benefit of all the facts and the law before deciding the defendant's motion, the State respectfully requests the Court grant it leave to file a supplemental response of no more than ten pages in length.

Wherefore, for the foregoing reasons and the reasons set forth in its motion seeking leave to file a supplemental response, the State respectfully requests this Honorable Court grant the State leave to file a supplemental response.

Respectfully Submitted,

/s/ Kari T. Morrissey

Kari T. Morrissey

Erlinda O. Johnson

Special Prosecutor

First Judicial District

1303 Rio Grande NW, Suite 5

Albuquerque, New Mexico 87104

(505) 361-2138

[ktm@morrisseylewis.com](mailto:ktm@morrisseylewis.com)

I hereby certify that a true and accurate  
Copy of the foregoing was provided to  
Counsel for the defendant via e-mail  
This 28<sup>th</sup> day of April 2024.

/s/ Kari T. Morrissey

Kari T. Morrissey