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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 RESPONSE TO THE STATE OF NEW MEXICO'S MOTION TO EXCLUDE DEFENSE WITNESSES

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Preliminary Statement

The Court entered a scheduling order in this case on February 26, 2024, that set deadlines for the parties to make their initial and amended discovery disclosures ("Sched. Ord."). The defense has undisputedly followed that scheduling order by serving its second amended witness list on May 6, 2024, on the deadline set by this Court—and on the same day that the State served its own final witness disclosures. But the State has now inexplicably moved to exclude the defense's timely disclosed witnesses on the ground that the defense should have disclosed the new witnesses earlier—despite the fact that the State itself disclosed new witnesses on the same date. The State's motion lacks merit and should be denied.

Background

On January 19, 2024, a New Mexico grand jury issued a one count indictment against Defendant Alec Baldwin, charging him with involuntary manslaughter based on the tragic events that occurred on October 21, 2021, on the set of *Rust*. On January 31, 2024, Baldwin filed a waiver of arraignment. On February 20, 2024, this Court held a status conference and discussed deadlines for the case. Six days later, the Court issued a scheduling order. That order set deadlines for disclosure of the parties' initial and amended witness lists:

1. The parties shall make their respective discovery disclosures within the timeframes set forth in Rule 5-501 NMRA and Rule 5-502 NMRA. Following ***initial*** discovery disclosures, the parties have a continuing duty to disclose and make available supplemental discovery within seven (7) days of the receipt of such information.

2. All requests for interviews of witnesses on the other party's initial witness list shall be made within fourteen (14) days from the filing date of the witness list or within fourteen (14) days of this scheduling order, whichever occurs later. If a party files a new witness list adding new witnesses, any requests to interview those witnesses shall be made no later than seven (7) days after the new witness list is served on the requesting party.

3. Unless the Court finds good cause, no party may file an amended witness list to add new witnesses ***after*** May 6, 2024.

Sched. Ord. at 1 (emphasis added). In compliance with these provisions, on March 1, 2024, the defense filed its initial witness list, followed by an amended witness list on April 19, 2024. Of the nineteen total witnesses listed on the amended witness list, the State sought to interview only eight.[1] On May 6, 2024, the defense filed its second amended witness list, adding a total of eight witnesses, one who had already been disclosed to the State and whose statement had already been scheduled, one who is a records custodian, and one who had been listed as the State's witness for the Gutierrez-Reed trial.[2] The State likewise disclosed multiple new witnesses that day.[3]

Despite the fact that both parties disclosed new witnesses on May 6, as contemplated and permitted by the scheduling order, the State now moves to exclude the defense's final seven witnesses. *See* No. D-0101-CR-2024-0013, "State of New Mexico's Motion to Exclude Defense Witnesses" (May 6, 2024) ("Mot."). The State claims that the defense's amended witness list violates Rule 5-502(a)(3) because it was filed too late and because the defense failed to provide witness statements.

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[1] The State requested interviews of David Halls, Robert Shilling, Hannah Gutierrez, John Ziello, Karen Kuehn, and Catherine Walters. The State also sought interviews of Bianca Alvarez and Christina Espinoza, who were removed from the defense witness list. The State did not request pretrial interviews of Jose Cortez or the ten officers listed on the defense witness list. Mr. Ziello, Ms. Kuehn, and Ms. Walters have all previously been listed by the State as witnesses in this case or the State's case against Hannah Gutierrez-Reed.

[2] Elizabeth Small was the witness already disclosed to the State and set for an interview (which has since been completed). The remaining additional witnesses listed were Doran Curtin, Reid Russell, Zachariah Sneesby, Thomas Gandy, Brian Bolman, Lucas Hussack, and Andrew Knight (records custodian). Mr. Russell was previously listed by the State as a witness for the State's case against Ms. Gutierrez-Reed.

[3] The State disclosed Jonah Foxman (who it had previously listed and removed), Craig Martin, Kevin Napp, Bianca Alvarez (formerly on the defendant's witness list), David Wachter, Sgt. Ronald Leli, John R. Metz, and Byron French.

ARGUMENT

The State's motion to exclude defense witnesses should be denied because there has been no scheduling order violation, no New Mexico rule violation, no prejudice, and because the State has unclean hands.

No Scheduling Order Violation. As the State itself notes in its motion (Mot. at 4), it is hornbook law that district courts have broad discretion to manage their own dockets. *See, e.g.*, *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *Johnson v. Bd. of Regents of Univ. of Georgia*, 263 F.3d 1234, 1269 (11th Cir. 2001); *State v. Rodriguez*, 2009-NMCA-090, ¶ 24, 215 P.3d 762. And discovery "is a matter *peculiarly* within the discretion of the trial court." *State v. Branch*, 2018-NMCA-031, ¶ 36, 417 P.3d 1141 (emphasis added); *accord State v. Ryan*, 2006-NMCA-044, ¶ 44, 132 P.3d 1040 (quoting *State v. Bobbin*, 1985-NMCA-089, ¶ 7, 707 P.2d 1185). An abuse of the trial court's near complete discretion in the discovery arena occurs only "when the ruling is clearly against the logic and effect of the facts and circumstances of the case." *State v. Rojo*, 1999–NMSC–001, ¶ 41, 971 P.2d 829 (quotation omitted).

This Court exercised its broad discretion to control discovery in this case by entering a scheduling order on February 26, 2024, setting discovery deadlines. In that order, the Court set deadlines for parties to make their *initial* discovery disclosures "within the timeframes set forth in Rule 5-501 NMRA and Rule 5-502 NMRA." Sched. Ord. at 1. The Court also set a deadline of May 6, 2024, for parties to amend their witness lists. *Id.* ("Unless the Court finds good cause, no party may file an amended witness list to add new witnesses after May 6, 2024.").

On May 6, 2024—the final date to disclose amended witness lists per the scheduling order—both the State and the defense added new witnesses. Those disclosures obviously did not violate the scheduling order. The State makes no argument to the contrary.

No New Mexico Rule Violation. Faced with the clear language of the scheduling order, the State argues that the defense violated Rule 5-502(A)(3) NMRA. That is wrong. The State's quotation of the rule omits critical language. Here is the full text of the cited provision (with the portions omitted by the State in italics):

> A. [W]ithin thirty (30) days after the date of arraignment or filing of a waiver of arraignment the defendant shall disclose or make available to the state the following:
>
> > (3) a list of the names and addresses of the witnesses the defendant intends to call at the trial, *identifying any witnesses that will provide expert testimony and indicating the subject area in which they will testify*, together with any statement made by the witness.

According to the State, this rule requires the defense to disclose every single trial witness within thirty days of arraignment and seemingly also requires the defense to have statements to disclose. That is incorrect.

The State's reading ignores Rule 5-502(A)(3)'s text, Rule 5-502(F), and the practical reality of how criminal cases are litigated. Begin with Rule 5-502(A)(3)'s text. The rule states that within thirty days after arraignment or the filing of a waiver of arraignment, "the defendant shall disclose . . . a list of the names and addresses of the witnesses the defendant *intends* to call at the trial." Rule 5-502(a)(3) NMRA (emphasis added). The rule's use of the present tense verb "intends" requires the defense to make an initial disclosure thirty days after arraignment or waiver of arraignment of witnesses that the defense—at that point in time—intends to call at trial. To comply with this provision, the defense need not have already determined, within a month of arraignment, every witness it *might* consider calling. Moreover, such a reading would, in effect, render moot the continuing duty to disclose by both the prosecution and the defense as new information is provided, and decisions based on that information are made ahead of trial. *See* Rule 5-505(A) ("If, subsequent to compliance with Rule 5-501 or 5-502, and prior to or during trial, a

party discovers additional material or witnesses which he would have been under a duty to produce or disclose at the time of such previous compliance if it were then known to the party, he shall promptly give written notice to the other party or the party's attorney of the existence of the additional material or witnesses.”). That cannot be right.

Similarly, the State’s reading would render Rule 5-502(F) meaningless. Rule 5-502(F) requires the defendant to file a certificate of compliance with Rule 5-502(A) with the clerk of court “at least ten (10) days prior to trial.” Reading the two provisions together, Rule 5-502 “provides that, no fewer than ten days before trial, the defendant shall disclose or make available to the State the names and addresses of the witnesses the defendant intends to call at the trial.” *State v. McKinney*, 2009 WL 6763616, at *2 (N.M. Ct. App. Feb. 9, 2009). If the State is correct that the final cutoff for disclosure of any witness is thirty days after arraignment (a reading of statutory language the State has not itself complied with for its own disclosure obligations under Rule 5-501), Rule 5-502(F) would be rendered superfluous. *See Whitely v. N.M. State Pers. Bd.*, 1993-NMSC-019, ¶ 5, 850 P.2d 1011 (“No part of a statute should be construed so that it is rendered surplusage.”).

As a practical matter, New Mexico criminal procedure cannot be read to require a defendant to disclose every witness he or she will call at trial within thirty days of arraignment (or the waiver of arraignment). Anyone who has practiced criminal defense law at the trial level, or indeed trial advocacy more generally, knows that trial strategy evolves and changes extensively throughout the life of a case in response to new evidence, new court rulings, motion practice, legal research, and witness interviews. That explains why Rule 5-502(a)(3) does *not* say the defense must disclose within thirty days of arraignment “a final list” of “witnesses the defendant [will] call at the trial.” The rule recognizes the near certainty that the defense witness list will evolve and

change extensively. For that reason, the rule requires only that a defendant disclose "a list" of "witnesses the defendant *intends* to call at the trial." Rule 5-502(a)(3) (emphasis added). The text of the rule aligns with the reality of a criminal prosecution, and is particularly apt here, where officers reported hundreds of potential witnesses at the scene of the incident. Certainly the defense should not be required to list every single person it is aware of who is remotely connected to the incident. Rather, the defense is required to disclose, with the benefit of discovery and investigation, those witnesses it *actually intends* to call at trial on the day such disclosures are due. This is precisely what the defense has done.[4]

This Court recognized this reading of Rule 5-502 expressly in the scheduling order. The scheduling order notes that the "parties shall make their respective discovery disclosures within the timeframes set forth in Rule 5-501 NMRA and Rule 5-502 NMRA. Following *initial* discovery disclosures, the parties have a continuing duty to disclose and make available supplemental discovery within seven (7) days of the receipt of such information. . . . Unless the court finds good cause, no party may file *an amended witness list* to add new witnesses after May 6, 2024." Sched. Ord. at 1. That language recognizes that Rule 5-502 merely requires initial disclosure witnesses thirty days after arraignment and allows for disclosure of amended witness lists later, in compliance with the Court's order.

It is precisely the same logic that applies to the State's disclosures—the State must make an *initial* disclosure "within ten (10) days after arraignment or the date of filing of a waiver of arraignment" of discovery materials and witnesses. Rule 5-501(A)(1)-(6) NMRA. Here, the State

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[4] Had the defense included on its witness list every single person identified in the thousands of pages of discovery, it seems almost certain the State would have filed a motion seeking to have the list reduced to those the defense actually considered potential trial witnesses for a trial set to last eight days.

has made continuing disclosures over the course of the last few months, including three separate disclosures over the past few days, including in response to deficiencies identified by the defense in the course of witness interviews.[5] Those disclosures have included witnesses, documents, videos, photographs, and expert materials. By the State's reading of the statutory language, each and every item of discovery and every witness disclosed beyond the 10-day mark should be subject to exclusion for belated disclosure.

Finally, the State bemoans the lack of "statements" provided by the defense. The defense is not in possession of any statements to turn over at this time, other than those the State has provided to the defense. Certainly the plain text of the rule cannot require the defense to turn over statements that do not exist.[6] Rather than simply confirm this was the case with undersigned counsel, the State opted for a histrionic plea for relief from a condition that simply does not exist.

No Prejudice. The State has also failed to show prejudice from the defense's disclosure of an amended witness list on the deadline set by this Court's scheduling order. Prejudice is required before "the mere showing of violation of a discovery order" (which in any event did not occur here) can result in "sanctioning a party." *State v. Harper*, 2011-NMSC-044, ¶ 16, 266 P.3d 25. In the past, courts have found prejudice only in extreme circumstances, such as when an amended witness list was introduced one day before the trial was scheduled. *See, e.g.*, *State v. Martinez,* 1998–NMCA–022, ¶¶ 5, 11–12, 954 P.2d 1198 (day before); *State v. Rivera*, 2016 WL

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[5] For example, on May 15, 2024, the State disclosed 33 new lapel videos from the two lead SFSO detectives (Cano and Hancock) *after* their pretrial interviews had already taken place. Given the extensiveness of the State's non-disclosures of information, which the State was aware of and had in its possession much longer than seven days before disclosure, Baldwin reserves all rights and remedies in connection with those issues.

[6] It is not clear from the Rule, including the portion omitted by the State, whether the requirement to turn over statements is even applicable to non-expert witnesses. However, that is of no moment where, as here, the defense has no statements to turn over that were not provided to the defense by the prosecution.

6561581, at *1-2 (N.M. Ct. App. Sept. 14, 2016) (witness disclosed on a Friday with trial set to begin the following Monday).

As an initial matter, the defense no more waited until May 6, 2024, to disclose "a total of 26 witnesses," than the State did to disclose 44. Mot. at 4. As the State is no doubt aware, 19 of the defense witnesses were previously disclosed, and the State had ample time to request any interviews it deemed necessary. Moreover, trial in this case is set to begin on July 10, 2024, over two months after the defense (and the State) filed amended witness lists. Those lists were filed a month before the deadline to complete witness interviews. Sched. Ord. at 2-3. Further, the six "new" fact witnesses on the defense's second amended witness list were present in the church on the day of the tragic accident, and law enforcement interviewed each of them. The State has been aware of those witnesses for nearly two and a half years. Moreover, the State cannot reasonably claim prejudice when it also disclosed seven new witnesses the same day (without any suggestion that its own disclosure was untimely).

The State's objection that it cannot conduct seven pretrial interviews within the next month rings hollow. As the New Mexico Supreme Court recently recognized, "[p]rosecutors bear significant responsibility in the administration of the law" because the State "is the strongest litigant in the world." *Matter of Chavez*, 2017-NMSC-012, ¶ 17, 390 P.3d 965 (quotation omitted). Given the "awesome investigative and prosecutorial powers of government," *Williams v. Florida*, 399 U.S. 78, 111-12 (1970) (Black, J., concurring in part and dissenting in part), it is implausible that the State will suffer prejudice from the defense's disclosure of seven new witnesses (i) a full

two months before trial, (ii) within the deadline set by the scheduling order, and (iii) with an entire month remaining for pretrial interviews.[7]

CONCLUSION

The defendant respectfully requests that the Court deny the State's motion to exclude defense witnesses.

Date: May 21, 2024

Respectfully submitted,

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[7] As demonstrated above, the State's motion is frivolous. Baldwin therefore reserves the right to seek attorney's fees from the Special Prosecutors personally as a sanction for their bad faith and frivolous motion. *See State ex rel. N.M. State Highway & Transp. Dep't v. Baca*, 1995-NMSC-033, ¶ 13, 896 P.2d 1148 (holding that a New Mexico court may invoke its inherent power to award attorney fees as a sanction against the state for bad faith litigation); *see also Harrison v. Bd. of Regents of Univ. of New Mexico*, 2013-NMCA-105, ¶ 2, 311 P.3d 1236 ("District courts have the inherent authority to 'impose a variety of sanctions *on both litigants and attorneys* in order to regulate their docket, promote judicial efficiency, and deter frivolous filings.'") (emphasis added). The citizens of New Mexico should not be required to pay for frivolous motions brought by overzealous prosecutors. Nor should the cost of defending against such a motion be borne by the individual against whom it is brought.

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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2024, a true and correct copy of the foregoing brief was emailed to opposing counsel.

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