

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

**STATE OF NEW MEXICO,
Plaintiff,**

No. D-101-CR-2024-0013

vs.

Judge Mary Marlowe Sommer

**ALEXANDER RAE BALDWIN,
Defendant.**

**STATE’S REPLY TO THE DEFENDANT’S RESPONSE TO THE
STATE’S MOTION TO EXCLUDE WITNESSES**

COMES NOW the State of New Mexico by and through Special Prosecutors Kari T. Morrisey and Erlinda O. Johnson, and hereby respectfully submits its reply to the defendant’s response to the State’s Motion to Exclude Witnesses and in support thereof the State submits the following.

While it is true that in its February 26, 2024, scheduling order the Court noted, “[u]nless the Court finds good cause, no party may file an amended witness list to add witnesses after May 6, 2024,” the Court also ordered the parties to make their respective discovery disclosures within the parameters set forth in Rule 5-501 NMRA and 5-502 NMRA.¹

The Court held a scheduling conference on February 20, 2024. During this hearing the Court expressed a desire to schedule the trial for October 2024. In response, the defendant insisted on an earlier trial date and requested a trial in June 2024. State’s counsel was not available in June and the court scheduled the trial for the soonest possible date after June 2024 with jury selection beginning July 8, 2024. Also, during the hearing on February 20, 2024,

¹ While the defendant bemoans the State filing addenda to its original witness list which was filed within the timeframe set forth in Rule 5-501, the State’s filings have been in compliance with Rule 5-505A in that it has promptly disclosed any new witnesses discovered as a result of additional investigation.

counsel for the State expressed concern as to whether a June trial date would allow adequate time to complete pretrial interviews and file necessary motions. The defendant's request for an early and speedy trial setting was well-received by the Court, thus making strict compliance with 5-502 a necessity.

Rule 5-502(A) NMRA 2015, concerns information "the defendant shall disclose or make available to the state." Rule 5-502(A)(3) provides that defendant shall disclose a list of names and addresses of the witnesses the defendant intends to call at the trial, including expert testimony, together with any statement made by the witness. The Court's scheduling order in this matter was within the contemplation of Rule 5-502 and the rules of criminal procedure. The rules of criminal procedure "provide for reciprocal discovery rights and are intended to provide ample opportunity for investigation of facts." *State v. Martin*, 1984-NMSC-077, ¶ 77, 686 P.2d 93 (Stowers J., dissenting).

In this case, the court ordered disclosure pursuant to Rule 5-502 NMRA which meant that within 30 days of January 31, 2024, the defendant had to disclose a list of the names of witnesses defendant intends to call at trial along with the witnesses' statements. On March 1, 2024, the defense filed its witness list naming only one witness. Then, on May 6, 2024, the deadline for filing pretrial motions the defense filed a witness list adding nine new witnesses² the defense had not previously or promptly disclosed to the State.

While the defense argues that they filed the May 6, 2024, witness list as provided by the court in its scheduling order in that no party may file an amended witness list to add new witnesses after May 6, 2024, the defendant is still in violation of Rule 5-502(A) and their late filing has resulted in prejudice to the state. It should be noted that May 6, 2024, was also the

² The nine new witnesses disclosed by the defense for the first time on May 6, 2024, are: Jonathan Jaramillo, Doran Curtin, Reid Russell, Zachariah Sneesby, Thomas Gandy, Brian Bolman, Lucas Huussack, Elizabeth Small, Andrew Knight.

deadline for filing pretrial motions. That means that if the State wished to file a pretrial motion as it relates to one of the witnesses not disclosed for the first time until May 6, 2024, the State is not able to do so. The State is also prejudiced by its inability to disclose any new witnesses necessary to counter any claims made by the witnesses disclosed on May 6, 2024. This tactical move by the defendant is in violation of Rules 5-502 and 5-505(A), and thus requires exclusion.

This Court may, in its discretion, suppress the testimony of witnesses for failing to list those witnesses in a timely fashion. *State v. Martinez*, 1998-NMCA-022, 954 P.2d 1198. Indeed, although preclusion of a witness is appropriate in limited circumstances, such circumstances are present when the defense has withheld information to gain a tactical advantage. *See State v. Sills*, 1998-NMSC-009, ¶ 43, 957 P.2d 51; *McCarty v. State*, 1988-NMSC-079, ¶ 16, 763 P.2d 360.

Here, the defense refused to disclose or even mention to the State its intention to add the nine new witnesses the defense disclosed for the first time on May 6, 2024, at nearly 6:00 p.m. The defendant's apparent strategy was designed to gain a tactical advantage so that the State would be unable, within allowed deadlines, to properly investigate the defense witnesses and determine whether it would be necessary for the State to list new witnesses for the purpose of refuting the testimony of the late disclosed witnesses. The State was also not provided with any witness statements. While the defense claims they do not have any statements, it is incredulous they do not possess any witness statements by these witnesses when they have listed them on their witness list.

Additionally, Defendant argues that it is unrealistic that a defendant must be required to disclose his defense witnesses within 30 days of arraignment as trial strategy evolves and changes. However, Rule 5-505(A) mandates,

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.

Rule 5-505(A) NMRA 2024. The defendant was clearly well aware, well in advance of May 6, 2024, that he intended to call the new nine listed witnesses. Yet, he did not promptly disclose them as required by Rule 5-505(A). Instead, he chose to wait until the expiration of the pretrial motions deadline and the last date as it relates to witnesses. The State has now been prejudiced by the defendant's strategy to gain a tactical advantage as the State is unable to file pretrial motions as it relates to the new witnesses, is unable to properly investigate the statements of the witnesses and list its own new witnesses to refute the testimony of the belatedly disclosed witnesses. Accordingly, this Court must exclude the nine new witnesses disclosed for the first time on May 6, 2024. *See Sills*, 1998-NMSC-009, ¶ 43.

Wherefore, for the foregoing reasons and the reasons set forth in its motion to exclude, the State respectfully requests this Court exclude the defendant's nine witnesses disclosed for the first time on May 6, 2024.

Respectfully Submitted,

/s/Erlinda O. Johnson

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I hereby certify that a true and accurate
Copy of the foregoing was provided to
Counsel for the defendant via e-mail
This 31st day of May 2024.

/s/Erlinda O. Johnson
Erlinda O. Johnson