

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

**STATE OF NEW MEXICO,**

**Plaintiff,**

**vs.**

**ALEXANDER RAE BALDWIN,**

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

**Defendant.**

**Judge Mary Marlowe Sommer**

**STATE OF NEW MEXICO'S MOTION TO EXCLUDE DEFENSE WITNESSES**

COMES NOW the State of New Mexico by and through Special Prosecutors Kari T. Morrisey and Erlinda O. Johnson and hereby respectfully moves this Court for an order excluding defense witnesses disclosed for the first time on May 6, 2024, and in support thereof the State submits the following.

**INTRODUCTION**

On October 21, 2021, defendant Alexandar Baldwin shot and killed Halyna Hutchins. Law enforcement immediately initiated an investigation of the shooting. On January 31, 2023, the defendant was charged with involuntary manslaughter, in D-101-CR-2023-0039. During the pendency of that case, the State of New Mexico disclosed voluminous discovery to the defense, including the identity of the witnesses the defense now lists on their witness list. That case was dismissed on April 21, 2023, pending the results of additional investigation by the State.

On January 19, 2024, a grand jury sitting in the First Judicial District issued a one count indictment, herein, against the Defendant Alexander Rae Baldwin, charging involuntary manslaughter (Negligent Use of a Firearm), in violation of NMSA 1978 §30-2-3(B) (1994) or in the alternative Involuntary Manslaughter (without due caution or circumspection). On January 31, 2024, the defendant filed a waiver of arraignment. On February 6, 2024, the State filed its witness list naming its fact witnesses as well as its proposed expert witnesses.

On February 20, 2024, this Honorable Court held a status conference with the parties. During the status conference the defense requested an expedited schedule. On February 26, 2024, this Court issued a scheduling order setting deadlines. In the Order, the Court directed the parties to comply with their obligations pursuant to Rules 5-501 and 5-502 NMRA (2015). On March 1, 2024, the defense filed its witness list naming David Halls as their only witness. On April 19, 2024, the defense filed its first amended witness listing an additional 18 witnesses. On May 6, 2024, the defense filed a second amended witness list naming an additional seven witnesses, for a total of 26 witnesses.

In the Court's scheduling order, the Court ordered, "[u]nless the Court finds good cause, no party may file an amended witness list to add new witnesses after May 6, 2024." The state has made all of its witnesses available to the defense for pretrial interviews. In fact, not only did the state disclose its witnesses within the requirements of Rule 5-501, but it has also provided the defense with all witnesses' statements and experts' reports as well as underlying data and a summary of proposed expert opinions. The defense, on the other hand, filed a witness listing one fact witness, on March 1, 2024. The defense then waits until May 6, 2024, to disclose witnesses about whom the defense was aware since 2023.

Prior to May 6, 2024, the defense did not notify the State it intended to call any additional witnesses other than those listed on its March 1, 2024, and April 19, 2024, witness lists. Instead, the defense waited until well after the deadline set forth in Rule 5-502 to disclose all of their witnesses. With less than 30 days remaining before the deadline for conducting pretrial interviews and eight weeks before trial, the State is prejudiced by the defendant's improper tactic aimed at sandbagging the state. Accordingly, this Court must exclude the defendant's belatedly disclosed witnesses as untimely.

## **ARGUMENT**

### **I. The Defendant's Witnesses Disclosed on May 6, 2024, Must be Excluded as Untimely**

Rule 5-502(A)(3) provides:

[W]ithin thirty (30) days after the date of arraignment or filing of a waiver of arraignment or not less than ten (10) days before trial, whichever date occurs earlier, 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, together with any statement made by the witness.

Rule 5-502(A)(3) NMRA (2015). When a defendant fails to comply with Rule 5-502, the Court may enter an order pursuant to Rule 5-505. *See State v. Ybanez*, 2013 WL 4527245, \*4 (Ct. App. March 27, 2013) (unpublished opinion). Rule 5-505(B), states, in part,

If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from calling a witness not disclosed. . .

Rule 5-505(B) NMRA (2024).

In this case, despite having had the information for well over one year, the defense failed to provide the state with a list of defense witnesses as required by Rule 5-502. Indeed, the

defense waited until less than 30 days before the expiration of the pretrial interview deadline to provide a complete list of defense witnesses to the state. To date, the defense has not provided the state with any statements of their listed witnesses also as required by Rule 5-502. Therefore, given the late disclosure of witnesses and the failure to disclose witness statements, the only viable remedy, at this juncture, is exclusion of defense witnesses.

A district court's decision to admit or exclude evidence for failure to comply with notice requirement is reviewed for an abuse of discretion. *State v. Guerra*, 2012-NMSC-014, ¶ 23, 278 P.3d 1031. "The decision to exclude evidence calls on judicial discretion to weigh all the circumstances, including willfulness in violating the discovery rule, the resulting prejudice to the opposing party, and the materiality of the precluded testimony." *State v. Guerra*, 2012-NMSC-014, ¶ 33.

In this case, the defendant was first charged on January 31, 2023, in connection with the killing of Halyna Hutchins. During the pendency of that case, the State disclosed discovery to the defendant, including interviews of individuals present on the set of the film on the day of the shooting. The defense was aware since 2023 of the witnesses it now lists at the eleventh hour. Additionally, since the issuance of the indictment in this case, the State disclosed complete discovery well in advance of May 6, 2024. Yet the defense waits until eight weeks before trial to disclose their witnesses.

It should be noted that during the February 20, 2024, status conference, the defense pressed for an expeditious trial. However, the defense waits until May 6, 2024, to disclose a total of 26 witnesses they intend to call at trial. Not only is the defense witness disclosure untimely, but they have failed to disclose their witnesses' statements as required by Rule 5-502(A)(3). Not only is this a classic game of gamesmanship, but it is also violative of Rule

5-502. The State is prejudiced by this calculated game of sandbagging as less than thirty days remain for conducting pretrial witness interviews. The defense could have notified the State it intended to call their proposed witnesses well in advance of May 6, 2024, and disclosed the witnesses' statements. Yet, the defense chose to lie in wait.

“A defendant’s right to present evidence on [her] own behalf is subject to [her] compliance with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.” *State v. Sanders*, 1994-NMSC-043, ¶ 26, 117 N.M. 452, 459–60 (internal quotation marks and citation omitted). The rules do not contemplate gamesmanship and this Court should not countenance such conduct which has now resulted in prejudice to the State of New Mexico. Accordingly, the Court must exclude the defense witnesses disclosed for the first time on May 6, 2024, for untimely disclosure.

Wherefore, for the foregoing reasons the State respectfully requests this Court exclude the defendant’s witnesses disclosed for the first time on May 6, 2024, as untimely.

Respectfully Submitted,

/s/ Erlinda O. Johnson

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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 6th day of May 2024.

/s/ Erlinda O. Johnson  
Erlinda O. Johnson