

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

Motion In Limine No. 1

**DEFENDANT ALEC BALDWIN'S MOTION *IN LIMINE* TO PRECLUDE
IMPROPER PROSECUTORIAL CONDUCT AND REQUIRE AN ORDERLY TRIAL**

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Counsel for Alec Baldwin

Defendant Alec Baldwin, by and through his attorneys, submits this motion *in limine* to preclude argument, testimony, evidence, and statements that violate courtroom rules and prosecutorial standards of conduct, including, by way of example, disguised or subtle remarks about Baldwin’s fame or wealth, improper burden shifting, vouching for the opinion of the State, urging the jury to reach a verdict based on anything other than the evidence, and coaching witnesses.

ARGUMENT

Special Prosecutor Kari Morrissey, a veteran criminal defense lawyer, now represents the State of New Mexico. Accordingly, she must now adhere to the ethical responsibilities and standards of conduct that accompany that role. “[A] prosecutor is not simply acting as counsel for one of two parties in a dispute; [she] is acting on behalf ‘of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all.’” *State v. Torres*, 2012-NMSC-016, ¶ 17, 279 P.3d 740 (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)). “While a prosecutor may strike hard blows, [she] is not at liberty to strike foul ones.” *State v. Cooper*, 2000-NMCA-041, ¶ 15, 3 P.3d 149 (quoting *Berger*, 295 U.S. at 88). Because of the “inherent confidence an average jury will likely have in an agent of the government, ‘improper suggestions, insinuations and, especially, assertions of personal knowledge are apt to carry much more weight against the accused when they should properly carry none.’” *Torres*, 2012-NMSC-016, ¶ 17 (quoting *Berger*, 295 U.S. at 88).

Morrissey, who may be overly accustomed to the leniency granted to counsel for criminal defendants, fell well short of these standards throughout the trial of Hannah Gutierrez-Reed. And there is no indication from the State that it intends to approach Baldwin’s trial any differently. This Court has a critical role to play in upholding principles of prosecutorial integrity to protect Baldwin’s due process rights. The Court should be particularly mindful of the following concerns.

1. Improper Burden Shifting

It is improper for the State to “distort[] the burden of proof” in any manner, *State v. Duran*, 2006-NMSC-035, ¶ 19, 140 P.3d 515, or to make arguments and statements that improperly “lower[] the State’s burden of proof.” *State v. Garvin*, 2005-NMCA-107, ¶ 15, 117 P.3d 970. One way a prosecutor can do this is to “suggest that the jury should determine the facts from the evidence *not* produced.” *State v. Diaz*, 1983-NMCA-091, ¶ 17, 668 P.2d 326.

Yet the State did exactly this during the Gutierrez-Reed trial. *See, e.g.*, Ex. A (HGR Trial Tr., Day 9), at 143:24-144:19 (BOWLES: “What evidence do you have?” . . . MORRISSEY: “Has the Defense filed any kind of motion in this case to try to get to the full contents of his phone?” . . . MORRISSEY: “Okay. And you agree with me that Defense Counsel is free to issue subpoenas and file Motions to Compel and do all of those things in a case if they feel that they’re missing evidence.”); Ex. B (HGR Trial Tr., Day 10), at 73:1-6 (MORRISSEY: “But this man is not a mystery to the State or the defense. I made him come in and sit down for a 1 1/2 hour interview so that the defense could ask him any questions they wanted and they asked him none. Not a single question. So what that means is that this is just all smoke and mirrors and deflection.”). Comments like these, which impermissibly shift the burden onto the defendant, are patently improper as they violate the sacrosanct rule that every criminal defendant remains innocent until proven guilty.

The State has already signalled that it intends to pursue similar tactics at Baldwin’s trial. For example, in a pretrial interview of one of the State’s witnesses conducted by Baldwin’s counsel, Morrissey ended the interview as follows: “[Y]ou haven’t been asked any questions today about Mr. Baldwin’s conduct on the movie set of Rust. Is that right?” Ex. C (Tr. of 4/25/24 PTI of Lane Luper), at 30:16-18. And: “So no one has made any inquiry to you today of what you may testify to in trial regarding Mr. Baldwin. Is that right?” *Id.* at 31:5-7 When comments like these

are made in front of a jury, jurors can easily be misled into thinking that the defense must put on a certain type of case—or any case at all—to be entitled to the presumption of innocence. Attempts to improperly shift the burden in this manner are particularly dangerous where the State has repeatedly reminded jurors and/or the public at large how many lawyers the defendant can afford to hire for his defense. *See, e.g.,* Ex. D (6/21/24 Hr’g Tr.) at 65:4-8 (“There are two lawyers on the State’s side. There are ten lawyers on the defendant’s side and they have at least one investigator. So if they can’t get that under control relatively quickly, I’m – I’m not sure what to say.”). The Court should enter an order precluding the State from engaging in any improper burden shifting, including when it involves comments about Baldwin’s defense strategy or Baldwin’s counsel.

2. Vouching for the Opinion of the State

A “prosecutor’s vouching for the credibility of witnesses and expressing his personal opinion concerning the guilt of the accused pose two dangers: such comments can convey the impression that evidence not presented to the jury, but known to the prosecutor, supports the charges against the defendant and can thus jeopardize the defendant’s right to be tried solely on the basis of the evidence presented to the jury; and the prosecutor’s opinion carries with it the imprimatur of the Government and may induce the jury to trust the Government’s judgment rather than its own view of the evidence.” *United States v. Young*, 470 U.S. 1, 18 (1985).

During closing argument in the Gutierrez-Reed trial, Special Prosecutor Morrissey violated this principle by expressing her personal views on various elements of the case. She told the jury, “***We know the truth.*** You have seen it throughout this trial. And I will remind you that during one of the heated objection exchanges between myself and Mr. Bowles, you heard Mr. Bowles cry out that he was looking for truth. ***Listen, I can bring a horse to water, but I cannot make him drink.***” Ex. B at 73:6-12. She further told the jury that her ***job*** is to tell them her opinion on critical

elements in the case: “If you think that person would have done a satisfactory safety check if she had been called back to the church, ***I am here to tell you that I strongly disagree.***” *Id.* at 77:9-12. “There can be no excuse for such conduct.” *State v. Vallejos*, 1974-NMCA-009, ¶ 15, 519 P.2d 135; *see also State v. Baca*, 1995-NMSC-045, ¶ 38 (recognizing as improper comments that “essentially used [the prosecutor’s] position to express a personal opinion on [the defendant’s] guilt or innocence”).¹

For the same reasons, a prosecutor may not use their role or their ability to object to interject their own opinions as to the true answers to defense counsel’s questions. Morrissey did this regularly at the Gutierrez-Reed trial, using her role to testify to the jury, impede the defense examination, speak up about her own role in the case, and interject her own opinions where they do not belong. *See, e.g.*, Ex. E (HGR Trial, Day 3), at 82:21-22 (MORRISSEY: “Objection. That misstates the facts that are already in evidence.” THE COURT: “Let him answer the question.”); Ex. F (HGR Trial, Day 5), at 67:19-24 (MORRISSEY: “I will object to the form of that question. It is completely contrary to the evidence that the jury has heard and Mr. Bowles knows it.”); *id.* at 76:16-24 (MORRISSEY: “Well, if he’s mentioning me, I don’t know what he’s talking about.”). Indeed, the prosecution’s objections became so heated that the Court had to admonish the prosecution that it’s not “advisable to get that upset in front of the jury,” urging the prosecution to approach for objections rather than to “yell it out from counsel table.” Ex. E at 248:14-18, 249:11-17.

¹ Likewise, it is improper for an investigative agent to be seated at counsel table throughout the trial to bolster the prosecution’s credibility or authority. At minimum, if an investigative agent who is a witness in the case is permitted to sit at counsel table throughout the trial, that witness should be required to testify first. *See, e.g., State v. Chavez*, 1983-NMCA-120, ¶ 12, 676 P.2d 257 (“When an exception is granted to the rule of exclusion the trial court . . . can order that the police officer be called first in order to avoid giving the prosecutor an unfair advantage or the appearance that the State is being favored.”) (citing *United States v. Frazier*, 417 F.2d 1138 (4th Cir.1969)).

The State must not be permitted to use its role, and the heightened credibility that carries with the jury, to vouch for its own opinions on the witnesses, the evidence, or the ultimate issues the jury must decide, nor may it be permitted to undermine the norms of courtroom decorum that allow each side to present its own evidence. Doing so fundamentally undermines the Defendant's constitutional right to a fair trial.

3. Coaching Witnesses

It is improper for any attorney—particularly an attorney representing the State to “advise a witness to testify falsely or to phrase a witness’[s] testimony.” *State v. Lopez*, 1986-NMCA-094, ¶ 42, 734 P.2d 778. The prosecution crossed these lines at times during the Gutierrez-Reed trial. *See, e.g.*, Ex. F at 106:14:-22 (MORRISSEY: “And when you met with me, did I tell you what to say?” CPL. HANCOCK: “We talked about what was going to be discussed.” MORRISSEY: “Did I tell you what testimony to give? CPL. HANCOCK: Yes.”). And it has crossed the line on numerous occasions throughout these proceedings. *See, e.g.*, Ex. D at 217:13-220:4.² To protect Baldwin’s fundamental due process rights, the Court should preclude the State from engaging in similarly improper conduct at trial.

² The disturbing revelations of the State’s improper witness coaching during Friday’s cross examination of FBI Agent Ziegler reinforce the need for the relief sought in this motion. As the Court will recall, cross-examination revealed that Ziegler met with the Special Prosecutors and their paid expert witness last week, something Ziegler had *never* done in his *entire* career, so they could come up with new, fabricated testimony about Ziegler’s gun testing that could explain the contradictions between Lucien Haag’s false testimony in the pre-trial interview that there were no modifications to the gun (as well as the State’s similar misrepresentations to the Court that the FBI’s testing caused any and all perceived modifications) and Haag’s third (belatedly disclosed) expert report stating that the FBI’s testing did *not* cause the modifications of the working surface of the hammer/sear. Baldwin reserves all rights to pursue other relief related to this wildly unacceptable misconduct. *See United States v. Ganadonegro*, 854 F. Supp. 2d 1088, 1097 (D.N.M. 2012) (“The State's duty to its citizens does not allow it to pursue as many convictions as possible without regard to fairness and the search for truth.”); *Lopez*, 1986-NMCA-094, ¶ 42 (coaching witnesses “improper”).

4. Urging the Jury to Reach a Verdict Based On Anything Other than Evidence

Because “[t]he sole duty of a prosecutor is to see that justice is done, . . . [p]rosecutorial commentary that urges a jury to convict for reasons other than the evidence defies the law and undermines the integrity of a verdict.” *State v. Cooper*, 2000-NMCA-041, ¶ 15, 3 P.3d 149. Arguments urging the jury to send a message with their verdict or to protect people like the victim fall squarely into this category. “[T]his kind of pandering is at best unprofessional; at worst, it places in jeopardy an otherwise just verdict.” *Id.* The State should be precluded from making any such arguments here. *Id.* at ¶ 14.

CONCLUSION

For the above reasons, the Court should preclude argument, testimony, evidence, and statements that violate courtroom rules and prosecutorial standards of conduct, including, by way of example, disguised or subtle remarks about Baldwin’s fame or wealth, improper burden shifting, vouching for the opinion of the State, urging the jury to reach a verdict based on anything other than the evidence, and coaching witnesses.

Date: June 24, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2024, a true and correct copy of the foregoing brief was emailed to opposing counsel.

/s/ Heather LeBlanc _____
Heather LeBlanc

EXHIBIT A

HEARING: TRIAL DAY 9, TIME 8:34:18 AM

THE COURT: All right. The State has rested. So does the Defense wish to make a motion? We're on the record.

MS. BARRERAS: Yes, Your Honor.

[Inaudible.]

THE COURT: Sure.

[Inaudible.]

THE COURT: Whatever you want to do.

[Inaudible.]

MS. BARRERAS: I'll just plug this in here. Okay. Your Honor, at this time, the Defense moved for a directed verdict on both counts, including the alternative count of involuntary manslaughter. And I put on the screen for the Court the legal standard. It's, of course, Rule 5607E that the Court's very well familiar with, which is the sufficiency of the evidence determination. There's case law defining sufficiency, which can be, of course, direct or circumstantial. In this case, I don't think there's a dispute that there is a lack of direct evidence that's been provided. Even the case agent testified that the case is based on distinct components of circumstantial nature evidence to support. And at this juncture, even though it is a sufficiency and even though inferences are in the State's favor, the Court still has to determine whether this circumstantial, in

1 they should have detained him?

2 MR. ELLIOTT: I do.

3 MS. MORRISSEY: And do you believe that they should have
4 put him in a police car and taken his phone away?

5 MR. ELLIOTT: Not necessarily placed in a police car,
6 but he should have been segregated from the other
7 witnesses, and his phone should've been taken to
8 preserve evidence.

9 MS. MORRISSEY: Don't you agree with me that there has
10 to be probable cause that there may be evidence on the
11 phone before the phone can be taken?

12 MR. ELLIOTT: But they wouldn't know if there was going
13 to be evidence on the phone without interviewing him.
14 There was no other way to know whether there was
15 evidence on that phone or not. But he was on the phone
16 when Law Enforcement arrived, so who was he talking to?

17 MS. MORRISSEY: Well, did you look at his call logs?

18 MR. ELLIOTT: That's after the fact. I'm talking about
19 when deputies arrived at the scene.

20 MS. MORRISSEY: Okay. I appreciate that, but what I'm
21 trying to figure out is what about your concerns
22 actually turned out to be real issues with the
23 investigation? What evidence was missing or hidden by

24 **Mr. Baldwin? What evidence do you have?**

25 MR. ELLIOTT: We don't have the full contents of his

1 phone.

2 MS. MORRISSEY: Has the Defense filed any kind of a
3 motion in this case to try to get to the full contents
4 of his phone?

5 MR. ELLIOTT: That, I don't know.

6 MS. MORRISSEY: And you understand, though, that a full
7 extraction of Mr. Baldwin's phone was done in New York,
8 but we were given a limited report. You understand
9 that?

10 MR. ELLIOTT: Yes, I do.

11 MS. MORRISSEY: And you also understand that,
12 originally, the same thing happened with Ms. Gutierrez?
13 A limited report was generated from a full extraction.
14 Correct?

15 MR. ELLIOTT: Yes.

16 MS. MORRISSEY: Okay. And you agree with me that
17 Defense Counsel is free to issue subpoenas and file
18 Motions to Compel and do all of those things in a case
19 if they feel that they're missing evidence.

20 MR. ELLIOTT: Yes, I'm aware of that.

21 MS. MORRISSEY: So do you think that it would have been
22 appropriate then for Law Enforcement to take Ms.
23 Gutierrez's phone away from her and not let her make a
24 phone call to her mother?

25 MR. ELLIOTT: That could be monitored also. I've --

EXHIBIT B

HEARING: JURY TRIAL - DAY 10, 3/6/2024, 8:34 A.M.

THE COURT: Okay. So we're on the record. Can I have the copies I requested?

MR. LEWIS: Yes. Copies requested.

MR. BOWLES: Oh, thanks.

THE COURT: Do you have yours?

MR. BOWLES: I don't have a copy, Your Honor. If there's an extra copy, if possible.

MR. LEWIS: So, yes, I've got an extra copy.

MR. BOWLES: Okay.

MR. LEWIS: Your Honor, last evening, Ms. Barreras and I worked on a combined --

THE COURT: Give me a second. I need Defendant's. Did you put them in here?

MR. LEWIS: Yes. That --

THE COURT: They're --

MR. LEWIS: Yes.

THE COURT: Okay. Thank you. Perfect.

MR. LEWIS: Yes.

THE COURT: Thank you. Okay. So the one thing, as I was looking through these -- let me just -- on the general intent and the -- what did you determine?

MR. LEWIS: So, after speaking with Ms. Barreras, we have determined to not include the general intent instruction. And the reason is because, as to the

1 But this man is not a mystery to the State or the
2 defense. I made him come in and sit down for a 1 1/2
3 hour interview so that the defense could ask him any
4 questions they wanted and they asked him none. Not a
5 single question. So what that means is that this is
6 just all smoke and mirrors and deflection. They don't
7 want the truth. We know the truth. You have seen it
8 throughout this trial. And I will remind you that
9 during one of the heated objection exchanges between
10 myself and Mr. Bowles, you heard Mr. Bowles cry out that
11 he was looking for the truth. Listen, I can bring a
12 horse to water, but I cannot make him drink. If you
13 want the truth, I'll bring the guy in. I'll make him
14 available for you to talk to. Ask him some questions.
15 Not a single one. It must have been that disgruntled
16 camera crew. You mean the people who believed that
17 safety on set was being compromised to such a degree
18 that they left? That decision may very well have saved
19 their lives.

20 So the \$60,000 question in this case, who brought
21 the live rounds on set? You know the answer to that. I
22 know the answer to that. I'm not telling you that
23 Hannah Gutierrez intended to bring live rounds on set.
24 I'm telling you that she was negligent. She was
25 careless. She was thoughtless. She brought them on

1 blood. So the first lethal injury that comes from the
2 gunshot is blood loss associated with it. And the
3 second one, if you recall from Dr. Jarrell, the wound to
4 the lung was also a lethal wound. Keep in mind, that
5 bullet went into her body, it went through her rib, it
6 severed her spinal cord, it punctured her lung. It came
7 out the back of her shoulder. And a few hours later,
8 Ms. Gutierrez is telling Corporal Hancock that she's
9 worried about her career. If you think that person
10 would have done a satisfactory safety check if she had
11 been called back to the church, I am here to tell you
12 that I strongly disagree.

13 The astonishing lack of diligence with regard to
14 gun safety is without question a significant cause of
15 the death of Halyna Hutchins. Did Mr. Baldwin also
16 contribute when he pointed the gun at people and pulled
17 the hammer back, and regardless of what he said to
18 George Stephanopoulos, pulled the trigger? Yes, he is.
19 And again, we'll deal with that another time. You don't
20 escape accountability when you load a live round into a
21 prop gun, tell the crew that it has dummy rounds in it,
22 hand it off to an actor, and leave the room because he
23 manipulated it. That's the whole point. That was the
24 whole point to him having it. Of course he was going to
25 manipulate it. It's foreseeable. Everything is so

EXHIBIT C

INTERVIEW WITH: LANE LUPER, DATE: 4/25/2024

MS. MORRISSEY: Great. Thank you.

MS. CLARK: Okay, great. Good morning. It's 9 a.m. Mountain Time on April 25th, 2024. This is the pretrial interview of Lane Luper in State versus Alexander Rae Baldwin. My name is Sara Clark, counsel for Mr. Baldwin, and with me is my colleague, Michael Nosanchuk. Kari, would you like to introduce your team?

MS. MORRISSEY: Kari Morrissey and Erlinda Johnson on behalf of the State of New Mexico, and we are joined by our investigator, Connor Rice, and our paralegal, Alexander James.

MS. CLARK: Great. Mr. Luper, can you see and hear me okay?

MR. LUPER: I sure can. Nice to meet you, Sara. Nice to meet you, Michael and Erlinda.

MS. CLARK: The whole gang is here. All right, so Mr. Luper, I'll be doing the questioning today on behalf of Mr. Baldwin. I've been trying to get better about it, but sometimes I speak too quickly. If you don't understand or don't hear something I say, please just ask me to clarify and I will -- I will try to do better. I would ask also that if I ask you to clarify, you also try to clarify and don't take it as an offense. Just want to make sure we have a clean record. For the

1 interacted with Halyna before I left -- before I left
2 for the day when I was picking up my things. And I
3 think that's it. That's what kind of stands out in my
4 mind.

5 MS. CLARK: Okay. And I'm going to apologize for having
6 one more, which is just have you had any interactions
7 with Mr. Rice without Ms. Morrissey present?

8 MR. LUPER: No, no, actually, no.

9 MS. CLARK: Okay. All right. I think that's all we
10 have for today, Kari. Do you want to ask any questions?

11 MS. MORRISSEY: Sure. Mr. Luper, the dailies that were
12 shown to you in the meeting that you had with me, those
13 haven't been shown to you today by Ms. Clark. Is that
14 right?

15 MR. LUPER: That's right.

16 MS. MORRISSEY: And you haven't been asked any questions
17 today about Mr. Baldwin's conduct on the movie set of
18 Rust. Is that right?

19 MR. LUPER: That's correct.

20 MS. MORRISSEY: And the majority of your contact with me
21 has been my inquiries about Mr. Baldwin's conduct on
22 Rust. Is that right?

23 MR. LUPER: That's correct.

24 MS. MORRISSEY: And is that generally what you testified
25 to in the grand jury?

1 MR. LUPER: Yes.

2 MS. MORRISSEY: And you haven't been asked any questions
3 about Mr. Baldwin today?

4 MR. LUPER: No, no.

5 MS. MORRISSEY: So no one has made any inquiry to you
6 today of what you may testify to in trial regarding Mr.
7 Baldwin. Is that right?

8 MR. LUPER: Right.

9 MS. MORRISSEY: All right. I don't have anything else.

10 MS. CLARK: All right. Thank you, guys. Have a good
11 day.

12 MR. LUPER: Thank you. Nice to meet you, Sara. You
13 have a wonderful day.

14

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EXHIBIT D



Transcript of Proceedings

Date: June 21, 2024

Case: State of New Mexico v. Alec Rae Baldwin, III

Case Number: D-0101-CR-2024-0013

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STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

))
STATE OF NEW MEXICO,))
))
Plaintiff,)) No.
)) D-0101-CR-2024-0013
vs.))
))
ALEC RAE BALDWIN III,))
))
Defendant.))

TRANSCRIPT OF REMOTE PROCEEDINGS
JUNE 21, 2024
9 A.M. MOUNTAIN TIME
SANTA FE, NEW MEXICO

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1 JUNE 21, 2024; 9 A.M.
2 SANTA FE, NEW MEXICO
3
4
5 JUDGE MARLOWE SOMMER: Good morning.
6 Okay. I'm just making sure that the people that are
7 trying to get on are viewed.
8 Okay. So good morning. Let's have
9 counsel state their appearance.
10 D-0101-CR-2024-00013, State of New Mexico versus
11 Alexander Rae Baldwin.
12 Parties state their name.
13 MS. MORRISSEY: Kari Morrissey and
14 Erlinda Ocampo Johnson on behalf of the State of New
15 Mexico.
16 MR. SPIRO: Alex Spiro and
17 Heather LeBlanc on behalf of Mr. Baldwin again.
18 JUDGE MARLOWE SOMMER: All right. Thank
19 you.
20 So we'll start with the defendant's
21 expedited motion for court order excluding defense
22 witnesses.
23 Go ahead.
24 MR. SPIRO: We have just one technical
25 issue, which is Mr. Bash has not been allowed into



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1 jail calls were provided weeks ago. I know how long
 2 it takes to listen to the jail -- the jail calls
 3 because I've had to pay my investigator to do it.
 4 There are two lawyers on the State's
 5 side. There are ten lawyers on the defendant's side
 6 and they have at least one investigator. So if they
 7 can't get that under control relatively quickly,
 8 I'm -- I'm not sure what to say.

9 We are not -- I want to make clear, we
 10 are not asserting that Ms. Gutierrez has a whole
 11 bunch of additional information that nobody's ever
 12 heard of. She is specifically being called by the
 13 State so that she can simply give the jury the
 14 information that she already provided to law
 15 enforcement and to OSHA with her lawyer's advice to
 16 waive her Fifth Amendment privilege.

17 So those are the things that we're asking
 18 to get in through her testimony. There's one other
 19 statement that she made in a jail call that was
 20 specifically provided to the defense. They don't
 21 need to go listen to 300 and some of them to find
 22 that. We gave them the number. We showed them
 23 exactly where it was.

24 Now, at the end of the day when the
 25 defendant comes to court and says, Judge, we don't

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1 of those videos were duplicative.

2 So what was happening is two police
 3 officers were conducting an interview. The defendant
 4 didn't have the lapel camera from one of the
 5 officers, but they did have the lapel video from the
 6 other officer who was present for the interview.

7 So a lot of their complaints about this
 8 stuff was coming in late. They're -- they're really
 9 overexaggerating any potential prejudice that they
 10 could have possibly had from any of that.

11 And, again, they asked for a June trial
 12 over -- because of my objection, the Court gave them
 13 a July trial when we were intending to have an
 14 October trial. So if they don't have enough time,
 15 there's a remedy. They can ask for a continuance.

16 Thank you.

17 JUDGE MARLOWE SOMMER: All right. The
 18 Court makes the following ruling to be followed up by
 19 an order of the Court to be filed next week.

20 The State denies the State's amended
 21 opposed expedited motion for use immunity for
 22 Hannah Gutierrez. It's pretty clear that she does
 23 not intend to cooperate.

24 The Court may grant use immunity pursuant
 25 to Rule 5-116 if the Court finds the testimony may be

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1 have enough time, we're prejudiced because we don't
 2 have enough time, I want to take the Court back to
 3 the hearing that we had on February 20th where we
 4 were talking about scheduling. And the Court
 5 suggested that the trial be scheduled in October, and
 6 the State suggested that the trial also be scheduled
 7 in October, and it was Mr. Spiro, it was the
 8 defendant who said, no, no, no, we need to have a
 9 trial in June. They wanted a trial last month.

10 They got a trial this month, and they
 11 continue to come to court and say, Judge, we don't
 12 have enough time. They don't have enough time
 13 because they asked to have the trial set too soon in
 14 a case that has massive discovery.

15 With regard to any of their complaints
 16 about all of these documents that -- that have been
 17 provided, I have to tell you, Judge, you know, when
 18 they indicate in their arguments that they received
 19 this massive amount of discovery.

20 What happened was we realized that not
 21 all of the lapel videos were in our possession, and,
 22 therefore, were not in the defendant's possession.
 23 So as soon as we realized that, we got those videos
 24 from the sheriff's department, we uploaded them, we
 25 provided them, and we realized that the vast majority

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1 necessary to the public interest, and the person has
 2 refused or is likely to refuse to testify. So it's
 3 really the public interest portion that I'm going to
 4 address because she has indicated that she won't
 5 testify.

6 You've indicated that she possesses
 7 information about what she already told the
 8 investigators. I don't think that there is anything
 9 that -- I mean, I haven't heard of anything that she
 10 might testify to that someone else could not testify
 11 to. Even about her observations, maybe -- I mean,
 12 maybe the only thing is -- the only portion is that
 13 talking about how Mr. Baldwin didn't -- you know,
 14 didn't want to be trained, things like that, which
 15 she could probably answer without the use immunity.

16 But, you know, the State says, well, the
 17 simple solution after she refuses to answer, even
 18 though she's been given immunity, is that you can
 19 hold her in contempt. I'm not going to do a mini
 20 trial within a trial, and I think that when all is
 21 said and done, if she's going to be an unavailable
 22 witness, then we're at the 11-804 evidence rule on
 23 available witnesses. So I think -- I think you
 24 should prepare accordingly.

25 MS. MORRISSEY: If I could just ask a



1 only in that manual with the hammer and a -- one
 2 particular setting.
 3 Q. Sure. Thank you for that clarification.
 4 But it is true that the manual discusses
 5 that this firearm can go off without pulling the
 6 trigger; true?
 7 A. Specifically with the hammer at rest,
 8 you're correct.
 9 Q. And you've said this isn't some
 10 phenomenon, this is something that's known about the
 11 design of these firearms; true?
 12 A. With the hammer at rest, you're correct.
 13 Q. And -- well, in the -- in the -- the
 14 owner's manual also says that a blow to the hammer
 15 resulting from a fall dropping of the gun can also
 16 cause the gun to discharge; true?
 17 A. With the hammer at rest, you're correct.
 18 Q. Okay. Or if the hammer slips from the
 19 shooter's thumb; right?
 20 A. I would have to see that line to see what
 21 that is referring to.
 22 Q. The manual also says that the person
 23 should not even touch the trigger because of this
 24 concern in sensitivity of the hammer falling; true?
 25 A. I would attribute that to general firearm

1 safety.
 2 Q. But it's in this manual; true?
 3 A. I don't specifically know that.
 4 MS. JOHNSON: Objection, Your Honor.
 5 Calls for speculation. And if he's referring to the
 6 manual, I'd ask that he give Mr. Ziegler an
 7 opportunity to review the manual.
 8 MR. SPIRO: I'm not required to do that
 9 in cross-examination. He said he reviewed the
 10 manual. I'm asking if he knows that.
 11 JUDGE MARLOWE SOMMER: What was the
 12 question that she's saying is speculation?
 13 MR. SPIRO: I guess that I just asked
 14 him. Does the manual say that don't even touch the
 15 trigger because the hammer can slip in this firearm?
 16 Q. BY MR. SPIRO: Does the manual say that,
 17 do you know that?
 18 THE WITNESS: May I answer?
 19 JUDGE MARLOWE SOMMER: Yes. But you're
 20 assuming that he remembers, so --
 21 MR. SPIRO: If he doesn't remember, I
 22 understand that he may not remember. It's in his
 23 report and it's in the manual so I'm just asking.
 24 JUDGE MARLOWE SOMMER: All right. Thank
 25 you.

1 THE WITNESS: I do not know that -- the
 2 answer to that.
 3 Q. BY MR. SPIRO: If the trigger is held in,
 4 okay, while you're cocking it, and the hammer falls,
 5 that can set off this firearm; isn't that true?
 6 A. Depending on how far the hammer is cocked
 7 because you have to keep in mind as you're cocking
 8 the hammer, the cylinder starts to rotate.
 9 So, again, depending on the position of
 10 the cylinder, if the hammer falls and does not make
 11 contact with the primer, it won't fire.
 12 However, you are correct, if I hold the
 13 trigger in and I cock the hammer and I let it go, you
 14 may fire cartridge in that method.
 15 Q. And the manual says, and you know from
 16 your own experience, that you shouldn't load every
 17 single chamber on one of these revolvers because it's
 18 at risk; fair?
 19 A. And that is referring to the hammer being
 20 at rest on a loaded chamber, yes.
 21 Q. Now, I understand you keep saying that,
 22 Mr. Ziegler.
 23 Were you prepped on that point before you
 24 testified here today?
 25 MS. JOHNSON: Objection, Your Honor.

1 Argumentative.
 2 MR. SPIRO: I'm allowed to ask a witness
 3 what their preparation was on a topic.
 4 JUDGE MARLOWE SOMMER: Overruled.
 5 Q. BY MR. SPIRO: Were you prepped on that
 6 topic before today, Mr. Ziegler?
 7 A. No, sir. I keep reiterating that because
 8 you appear to be insinuating that this firearm can
 9 fire with the hammer in every position, and you're
 10 using direct quotes from the owner's manual when
 11 those quotes refer to a specific hammer setting.
 12 Q. So you were -- I'm asking you a different
 13 question now, which is were you prepped on the issue
 14 of whether or not this gun could fire without pulling
 15 the trigger before today?
 16 A. We certainly had trial prep.
 17 Q. The mechanism that we're describing,
 18 which you obviously can describe more artfully than
 19 me, is not the same on every modern firearm. Not
 20 every modern firearm can go off like what we're
 21 describing; true?
 22 A. That is correct.
 23 Q. And there's actually examples of firearms
 24 similar to this firearm; right? And you've said
 25 you've disassembled very similar single-action

EXHIBIT E

HEARING: JURY TRIAL - DAY 3, 2/26/2024, 8:19 A.M.

THE COURT: The case I'm calling is D-1010-202340, State of New Mexico versus Hannah Gutierrez. Parties, state their name.

MS. MORRISSEY: Kari Morrissey and Jason Lewis on behalf of the State of New Mexico.

THE COURT: Could you go get Counsel?

THE COURT: All right. Counsel, approach.

[Sidebar discussion.]

[Inaudible.]

MR. BOWLES: [Inaudible.]

MS. MORRISSEY: [Inaudible.]

MR. BOWLES: Right.

MS. MORRISSEY: [Inaudible.] I do agree [inaudible] to get up to [inaudible] not coming from Mr. Bowles. This is her choice. She understands [inaudible] Mr. Bowles represents. She needs to [inaudible]. She needs to be [inaudible].

MR. BOWLES: She [inaudible]. She isn't actually [inaudible]. She has [inaudible] to be seen in trial. [Inaudible] to make sure that she is represented [inaudible].

THE COURT: I want her to come up.

MR. BOWLES: Yes.

THE COURT: Please raise your right hand. Do you swear,

1 be in the paperwork that was submitted, but I don't know
2 that.

3 MR. BOWLES: Okay. And you have no idea where Seth
4 Kenney brought the rounds that he submitted?

5 MR. ZIEGLER: I do not.

6 MR. BOWLES: And he didn't submit them to you. Correct?

7 MR. ZIEGLER: No. We received evidence from the case
8 agents.

9 MR. BOWLES: Okay. And you didn't personally conduct
10 any fingerprint or DNA testing because that's out of
11 your specialty?

12 MR. ZIEGLER: That's correct. I did not.

13 MR. BOWLES: Earlier, you were talking about the
14 different types of ammo from 126 Monroe Street. Do you
15 recall that you were showing live, dummy, and blank --
16 all three types?

17 MR. ZIEGLER: Can you ask that question again?

18 MR. BOWLES: Sure. As part of your examination of the
19 rounds from 126 Monroe Street, you're aware that there
20 were live rounds, blank rounds, and dummy rounds?

21 MS. MORRISSEY: Objection. That misstates the facts
22 that are already in evidence.

23 THE COURT: Let him answer the question.

24 MR. ZIEGLER: Do you have specific item numbers that I
25 can reference?

1 and they walked off the day before the shooting. Part
2 of that was their hotel situation. You were aware of
3 that, weren't you?

4 MR. ADDIEGO: I don't know about disgruntled, but I know
5 that they were promised hotels or housing and -- and
6 those promises never came to fruition.

7 MR. BOWLES: Okay. And so, they left, and the next day
8 when there had to be a new camera crew, they had to get
9 some more people, you were aware Video Village was down?

10 MR. ADDIEGO: I was not.

11 MR. BOWLES: You didn't know Video Village was down at
12 all?

13 MS. MORRISSEY: Asked and answered, Your Honor.

14 THE COURT: Counsel, approach.

15 [Sidebar discussion.]

16 THE COURT: I don't think it's advisable to get that
17 upset in front of the jury. So, if you want to
18 approach, approach.

19 MS. MORRISSEY: Mr. Bowles needs to stop asking the same
20 question over and over and over again because he's not
21 getting a response that he likes. He asks the question,
22 the witness answers, he moves on to his next question.
23 That's the way questioning of witnesses works.

24 MR. BOWLES: Judge, I'm --

25 THE COURT: Well, okay.

1 MS. MORRISSEY: He's not doing it. He asked that
2 question twice and he's done it numerous times.

3 MR. BOWLES: I'm entitled to some cross, and I can move
4 on to another fact and time, but --

5 THE COURT: Okay.

6 MR. BOWLES: -- I understand what you're saying.

7 THE COURT: You can ask leading questions.

8 MR. BOWLES: Yes.

9 THE COURT: but that doesn't mean you can testify.

10 MR. BOWLES: Yes, I understand.

11 THE COURT: All right. So, if you want to get up every
12 single time, I think that's a better way to do it than
13 do what's happening.

14 MS. MORRISSEY: I'm sorry. I don't understand.

15 THE COURT: If you think that he's doing something wrong
16 on cross, I think you should approach rather than yell
17 it out from the counsel table.

18 MS. MORRISSEY: Okay. Obviously, the Court, to a
19 certain degree, agrees with me Mr. Bowles has been
20 trying to testify. He --

21 THE COURT: He has been, but you're not objecting.

22 MS. MORRISSEY: Well, I have been objecting and it
23 doesn't stop, so --

24 THE COURT: I'm not --

25 MS. MORRISSEY: I'm sorry. [Inaudible].

EXHIBIT F

HEARING: JURY TRIAL - DAY 5, 2/28/2024, 8:51 A.M.

MS. MORRISSEY: Are we on the record? Okay, we'll go ahead and resume the video at one hour and five minutes.

[State's Exhibit 68 video is played.]

MS. MORRISSEY: And I'm sorry, Corporal. I, myself, couldn't hear what kind of an instructor you were asking her about. Can you summarize that?

CPL. HANCOCK: Yeah. So I had asked her if she was a certified firearms instructor.

MS. MORRISSEY: Okay. Thank you.

[State's Exhibit 68 video is played.]

THE COURT: Can I just ask you to stop? Are we good on hearing okay? Okay. Thank you.

[State's Exhibit 68 video is played.]

MS. MORRISSEY: Corporal, based on your understanding of dummy rounds and how an armorer would check dummy rounds, based on your investigation, is it possible to determine that every round in a box is a dummy round if you just shake the entire box?

CPL. HANCOCK: No.

MS. MORRISSEY: Because if you just shake the box, how can you tell?

CPL. HANCOCK: I mean, yeah, you could more than likely hear some of them jingling, but it wouldn't be, you know, feasible to point out that every single one of

1 CPL. HANCOCK: Correct.

2 MR. BOWLES: And you never took his DNA. Correct?

3 CPL. HANCOCK: That's correct.

4 MR. BOWLES: And you also never took his phone to be
5 downloaded like the other phones that you took. Right?

6 CPL. HANCOCK: That's correct.

7 MR. BOWLES: So Mr. Kenney, I know you mentioned had
8 shown you certain text messages and other information,
9 but you never got the entirety of what was on his phone.
10 Correct?

11 CPL. HANCOCK: It wasn't a full extraction, if that's
12 what you're referring to.

13 MR. BOWLES: Yes, right. It was not a full extraction?

14 CPL. HANCOCK: That's correct.

15 MR. BOWLES: And in contrast, you get extractions of
16 phones for Ms. Gutierrez-Reed, Sarah Zachry, Mr. Halls,
17 and Mr. Baldwin. Correct?

18 CPL. HANCOCK: Yes, because they were on the set.

19 MR. BOWLES: Okay. And you had mentioned that before,
20 but actually, Seth Kenney was the primary source of
21 ammunition to the set. Correct?

22 MS. MORRISSEY: I will object to the form of that
23 question. It is completely contrary to the evidence
24 that the jury has heard and Mr. Bowles knows it.

25 MR. BOWLES: I -- actually, Your Honor, I don't. And

1 CPL. HANCOCK: Yes.

2 MR. BOWLES: So your testimony that -- you've gone over
3 these exhibits, you've gone over what you're going to
4 say today?

5 CPL. HANCOCK: That's correct.

6 MR. BOWLES: So when you gave those answers earlier, in
7 fact, you knew what a particular exhibit number was. It
8 was 48. That was something you all had discussed,
9 wasn't it?

10 CPL. HANCOCK: I don't believe the specific exhibit
11 number, but again, she showed me when she would ask
12 about it.

13 MR. BOWLES: On a break?

14 CPL. HANCOCK: Just now when she --

15 MR. BOWLES: Right.

16 MS. MORRISSEY: I'm sorry. I don't know off the top of
17 my head what Exhibit 48 is, and I don't know that the
18 witness does. So in order for this to make sense for
19 her to --

20 THE COURT: She didn't ask for clarification.

21 MS. MORRISSEY: All right.

22 THE COURT: I think we're just going over this.

23 MS. MORRISSEY: Well, if he's mentioning me, I don't
24 know what he's talking about.

25 MR. BOWLES: Well, she does because she was the one that

1 MS. MORRISSEY: You met with me on another occasion to
2 prepare on another case. Is that correct?

3 CPL. HANCOCK: Yes.

4 MS. MORRISSEY: Why is it important for you to meet with
5 the prosecuting attorney before you testify?

6 CPL. HANCOCK: A lot of it is to refresh myself with,
7 you know, parts of the case and what I need to focus on,
8 especially because this is such a big case. As you can
9 see, I have a large binder and a large box. So it helps
10 me to narrow down facts that I need to focus on.

11 MS. MORRISSEY: And have you given truthful testimony
12 today?

13 CPL. HANCOCK: Yes.

14 MS. MORRISSEY: And when you met with me, did I tell you
15 what to say?

16 CPL. HANCOCK: We talked about what was going to be
17 discussed.

18 MS. MORRISSEY: Did I tell you what testimony to give?

19 CPL. HANCOCK: Yes.

20 MS. MORRISSEY: But what did I tell you to give? Did I
21 tell you to tell a lie?

22 CPL. HANCOCK: No.

23 MS. MORRISSEY: You're telling the truth?

24 CPL. HANCOCK: Yes, I am.

25 MS. MORRISSEY: Did I tell you to tell the truth?