

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,
Plaintiff,

v.

No. D-101-CR-2024-00013

ALEXANDER RAE BALDWIN III,
Defendant.

**ORDER DENYING DEFENDANT ALEC BALDWIN'S EXPEDITED MOTION FOR
ORDER EXCLUDING WITNESSES**

THIS MATTER came before the Court on Defendant Alec Baldwin's Expedited Motion for Order Excluding Witnesses, filed June 3, 2024. Having reviewed the briefing, considered oral argument, and being otherwise fully advised, THE COURT FINDS, CONCLUDES, AND ORDERS:

PROCEDURAL SUMMARY

1. On June 3, 2024, Defendant Alexander Rae Baldwin III ("Defendant") filed his Defendant Alec Baldwin's Expedited Motion for Order Excluding Witnesses ("Expedited Motion"). Thereafter, on June 4, 2024, the State filed its State's Expedited Response to the Defendant's Motion to Exclude Previously Disclosed Witnesses ("Response"). In turn, on June 14, 2024, Defendant filed his Reply in Support of Defendant's Motion for Order Excluding Defense Witnesses ("Reply").
2. On June 21, 2024, the Court entertained oral argument on the Expedited Motion. Thereafter, the Court announced its decision to deny the Expedited Motion, and hereby enters its written order in accordance with the Court's verbal decision.

FACTUAL BACKGROUND

3. On February 26, 2024, the Court entered a Scheduling Order. Pertinent to the instant issue, the Scheduling Order ordered the parties to “make their respective discovery disclosures within the timeframes set forth in Rule 5-501 NMRA and Rule 5-502 NMRA.” Feb. 26, 2024 Scheduling Order ¶ 1; *see also* Rule 5-501(A)(5) NMRA (identifying requirement of disclosure of witness list); Rule 5-502(A)(3) NMRA (same). Further, the Court’s February 26, 2024 Scheduling Order provides, “[u]nless the Court finds good cause, no party may file an amended witness list to add new witnesses after May 6, 2024.” Feb. 26, 2024 Scheduling Order ¶ 3.
4. On May 6, 2024, at 4:39 PM, the State filed its Second Addendum to State of New Mexico’s Third Amended Witness List for Trial (“May 6, 2024 Second Addendum”). The State’s May 6, 2024 Second Addendum expressly identified the State’s 44th witness. Further, the May 6, 2024 Second Addendum listed, as witness no. 45, “[a]ny witnesses disclosed by defense, called as a witness by the defense or listed on the defense witness list.” May 6, 2024 Second Addendum 2; *see also* State of N.M.’s Third Am. Witness List for Trial, filed April 19, 2024.
5. Contemporaneously, on May 6, 2024, at 5:48 PM, Defendant filed his Second Amended Defendant’s Witness and Expert Witness List (“Defendant’s May 6, 2024 Second Amended Witness List”). Defendant’s May 6, 2024 Second Amended Witness List added nine new witnesses when compared to the Defendant’s April 19, 2024 First Amended Defendant’s Witness and Expert Witness List. *See* Expedited Mot. 1.
6. Defendant’s May 6, 2024 Second Amended Witness List included the following witnesses: Zachariah Sneesby, Thomas Gandy, and Hannah Gutierrez.

7. Defendant's filing of Defendant's May 6, 2024 Second Amended Witness List prompted the State to file, on May 6, 2024, its State of New Mexico's Motion to Exclude Defense Witnesses. The parties thereafter engaged in additional briefing on this motion brought by the State.
8. On June 2, 2024, Defendant filed a Defendant Alec Baldwin's Notice of Withdrawal of Witnesses from Defendant's Witness List. Through this notice, Defendant alerted the Court of its removal of eleven witnesses from Defendant's May 6, 2024 Second Amended Witness List, thereby partially "consent[ing] to the relief sought by the State's [May 6, 2024 motion to exclude defense witnesses]." *See* June 2, 2024 Def. Alec Baldwin's Notice of Withdrawal of Witnesses from Def.'s Witness List 1. Defendant further filed on June 2, 2024, at 6:27 PM, a Third Amended Defendant's Witness List. Pertinent to the instant motion, Defendant's June 2, 2024 Third Amended Defendant's Witness List removed Zachariah Sneesby from Defendant's list of trial witnesses. However, Defendant's third amended witness list retains Thomas Gandy and Hannah Gutierrez as defense witnesses.
9. On June 2, 2024, at 9:17 PM, the State filed a Third Addendum to State's Third Amended Witness List (the "June 2, 2024 Third Addendum"). The June 2, 2024 Third Addendum expressly added three witnesses to the State's active April 19, 2024 Third Amended Witness List for Trial: specifically, Zachariah Sneesby, Thomas Gandy, and Hannah Gutierrez. On June 3, 2024, the State filed a Notice of Withdrawal of State's Motion to Exclude Certain Defense Witnesses.
10. On June 3, 2024, Defendant filed the Expedited Motion.

ANALYSIS AND RULING

11. Defendant's Expedited Motion asks the Court to prohibit the State from adding the expressly identified witnesses on the State's June 2, 2024 Third Addendum on grounds of a purported discovery violation, judicial estoppel, and mootness. The Court declines to grant the relief requested by Defendant.
12. Purported Discovery Violation. "Trial courts possess broad discretionary authority to decide what sanction to impose when a discovery order is violated." *State v. Le Mier*, 2017-NMSC-017, ¶ 22, 394 P.3d 959; *see also id.* ("The propriety of a trial court's decision to exclude or not to exclude witnesses is reviewed for abuse of discretion."). "When exercising their discretionary power, our courts must be ever mindful of the fact that witness exclusion is a severe sanction and one that should be utilized as a sanction of last resort. Witness exclusion may harm the community's interest by detrimentally affecting the prosecution's ability to see an offender brought to justice and, conversely, can thwart the accused's opportunity to demonstrate innocence." *Id.* ¶ 21 (internal citations omitted).
13. "Courts must evaluate the considerations identified in *Harper*—culpability, prejudice, and lesser sanctions—when deciding whether to exclude a witness and must explain their decision to exclude or not to exclude a witness within the framework articulated in *Harper*, but it is not the case that witness exclusion is justified only if all of the *Harper* considerations weigh in favor of exclusion." *Id.* ¶ 20.
14. Pursuant to *State v. Harper*, the "assessment of sanctions 'depends . . . upon the extent of the Government's culpability . . . weighed against the amount of prejudice to the defense.'" *State v. Harper*, 2011-NMSC-044, ¶ 16, 150 N.M. 745 (quoting *State v. Chouinard*, 1981-NMSC-096, ¶ 12, 96 N.M. 658). "[W]hen discovery has been produced late, prejudice

does not accrue unless the evidence is material and the disclosure is so late that it undermines the defendant's preparation for trial." *Id.* ¶ 20.

15. Here, the Court concludes that the State's level of culpability for the June 2, 2024 Third Addendum witness list is low, that Defendant is not prejudiced, and that the sanction of witness exclusion is inappropriate.
16. As to culpability, the State's May 6, 2024 Second Addendum listed, as witness no. 45, "[a]ny witnesses disclosed by defense, called as a witness by the defense or listed on the defense witness list." Further, Defendant's May 6, 2024 Second Amended Witness List included the following witnesses: Zachariah Sneesby, Thomas Gandy, and Hannah Gutierrez (collectively, the "Contested Witnesses"). Hence, even though the State sought to exclude certain defense witnesses through its May 6, 2024 State of New Mexico's Motion to Exclude Defense Witnesses, the State—via cross-reference—had identified the Defendant's witnesses as potential State witnesses.
17. Thus, while the June 2, 2024 Third Addendum appears late, and therefore in violation of the Court's Scheduling Order, the State identified the Contested Witnesses as potential State witnesses in its May 6, 2024 Second Addendum. Therefore, even if the June 2, 2024 Third Addendum constitutes a discovery order violation, because the State waited over three weeks to expressly identify State witnesses who had previously only been indirectly identified, the Court concludes that the State's level of culpability is low.
18. Further, given that the Contested Witnesses were indirectly identified as State's witnesses on the May 6, 2024 Second Addendum, the Court finds good cause for the State to expressly add the Contested Witnesses via the June 2, 2024 Third Addendum. *See* Feb.

26, 2024 Scheduling Order ¶ 3 (“Unless the Court finds good cause, no party may file an amended witness list to add new witnesses after May 6, 2024.”).

19. As to prejudice, the Court concludes that the Defendant is not prejudiced by the June 2, 2024 Third Addendum. All of the Contested Witnesses appeared on Defendant’s May 6, 2024 Second Amended Witness List. Further, two of the three Contested Witnesses remain on Defendant’s active June 2, 2024 Third Amended Defendant’s Witness List. The Court does not find prejudice when these witnesses were already known to Defendant. *Cf. Harper*, 2011-NMSC-044, ¶ 20 (“However, when discovery is merely delayed in reaching the defendant, or the defendant has knowledge of the contents of the unproduced evidence, determination of prejudice is more elusive.”).

20. As to sanctions, after weighing the factors of culpability and prejudice, the Court concludes that it would be an abuse of the Court’s discretion to impose the sanction of witness exclusion in this scenario. *Harper*, 2011-NMSC-044, ¶ 21 (“Therefore, like outright dismissal of a case, the exclusion of witnesses should not be imposed except in extreme cases, and only after an adequate hearing to determine the reasons for the violation and the prejudicial effect on the opposing party.”). The Court further notes that Defendant’s Expedited Motion and Reply do not ask for alternative sanctions beyond witness exclusion. Albeit, given the Court’s previous findings of low culpability and no prejudice, the Court additionally finds that the imposition of lesser sanctions would be inappropriate. Therefore, the Court declines to impose sanctions.

21. Judicial Estoppel. “The doctrine of judicial estoppel prevents a party who has successfully assumed a certain position in judicial proceedings from then assuming an inconsistent position, especially if doing so prejudices a party who had acquiesced in the former

position.” *Matter of Estate of Kuchan*, 2024-NMCA-032, ¶ 11, 545 P.3d 1199 (quoting *Laughlin v. Convenient Mgmt. Servs., Inc.*, 2013-NMCA-088, ¶ 16, 308 P.3d 992). To apply the doctrine:

First, the party against whom the doctrine is to be used must have successfully assumed a position during the course of litigation. Second, that first position must be necessarily inconsistent with the position the party takes later in the proceedings. Finally, while not an absolute requirement, judicial estoppel will be especially applicable when the party’s change of position prejudices a party who had acquiesced in the former position.

Id. (citation omitted).

22. Further, “[t]he primary purpose of the judicial estoppel rule is to prevent parties from playing fast and loose with the court by *successfully* arguing one position and then later adopting a position inconsistent with the first.” *Id.* ¶ 14 (citation and quotation marks omitted). “Under New Mexico law, a party successfully assumes or argues a position when the party takes that position before a judicial body, that position is at issue, and the party is ultimately successful.” *Id.*

23. Here, the Court concludes that the doctrine of judicial estoppel does not apply. The State withdrew its May 6, 2024 State of New Mexico’s Motion to Exclude Defense Witnesses, via its June 3, 2024 notice of withdrawal of said motion to exclude, before the Court could grant or deny the State’s motion to exclude. Thus, the State did not “play[] fast and loose with the court by *successfully* arguing one position and then later adopting a position inconsistent with the first.” *Matter of Estate of Kuchan*, 2024-NMCA-032, ¶ 14 (additional emphasis added) (citation and quotation marks omitted). Further, as discussed above, the Court does not find that Defendant is prejudiced by the State’s June 2, 2024 Third Addendum witness list. Therefore, the Court declines to apply the doctrine of judicial

estoppel. *Cf. Laughlin*, 2013-NMCA-088, ¶ 15 (“We review the proper application of judicial estoppel under an abuse of discretion standard.”).

24. Mootness. The Court disagrees that the issue herein is moot. As evidenced by the State’s Response, the State opposes the Defendant’s Expedited Motion. *Cf. Gunaji v. Macias*, 2001-NMSC-028, ¶ 9, 130 N.M. 734 (remarking that a case is moot when no actual controversy exists and the court cannot grant actual relief).

CONCLUSION

IT IS THEREFORE ORDERED that Defendant Alec Baldwin’s Expedited Motion for Order Excluding Witnesses is hereby DENIED.

IT IS HEREBY ORDERED.



MARY MARLOWE SOMMER
DISTRICT COURT JUDGE
DIVISION VIII

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date of acceptance for e-filing a true and correct copy of the foregoing was e-served on counsel registered for e-service in this matter as listed below.

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