

**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 MOTION IN LIMINE 8 TO ALLOW THE USE OF
EXHIBITS DURING THE STATE'S OPENING STATEMENT**

COMES NOW the State of New Mexico by and through its Special Prosecutors Kari T. Morrissey and Erlinda O. Johnson and hereby moves this Court for an *in limine* order allowing the State to use some of the exhibits to be introduced at trial, during opening statement and in support thereof submits the following.

The use of exhibits in opening statement is routine and standard practice. As explained by Professor Steven Lubet, "Since the purpose of [an] opening statement is to explain what the evidence will show, you are entitled to read from or display documents and other exhibits that you expect to be admitted into evidence." Steven Lubet, *Modern Trial Advocacy: Analysis and Practice* 459 (3d ed. 2004). The use of these exhibits has been permitted by numerous courts. *See United States v. DeLeon*, No. CR 15-4268 JB, 2018 WL 4184236, at *1-2 (D.N.M. Apr. 12, 2018); *Stella v. Davis Cnty.*, No. 1:18-CV-002, 2022 WL 2702642, at *6 (D. Utah July 12, 2022) ("Because Plaintiffs have clearly stated that they will lay a foundation for the photographs when presenting their case, the court will not allow Defendants' refusal to stipulate to prevent Plaintiffs from using an otherwise admissible piece of evidence in their opening statement."); *see Home Depot U.S.A., Inc.*, No. 18 C 130, 2021 WL 4980085, at *3 (N.D. Ill. Oct. 6, 2021) ("The Court

rejects Defendants' argument that Stephen cannot publish any demonstrative or photographic exhibits during opening statements because she will have not laid a foundation for them at that time."); *Jordan v. Binns*, 712 F.3d 1123, 1134 (7th Cir. 2013) (no error in allowing use of a crash report as a demonstrative during opening statements); *Gomez v. Palmer*, No. 11 C 1793, 2016 WL 212800, at *10 (N.D. Ill. Jan. 19, 2016) (use of photograph as demonstrative during opening statements would "aid the jury in understanding the scope of the case").

The State respectfully requests this Court allow the state to use certain exhibits it intends to introduce at trial, during opening statements. The exhibits will consist of photos of the church, the scene of the shooting, photos of Ms. Hutchins, the defendant on October 21, 2021, a short video clip of Deputy Lefleur's lapel video when he responded to the shooting scene, the revolver used to shoot Ms. Hutchins, photos of the evidence revolver and parts from the FBI, after the accidental discharge test and three very brief video clips from the movie. To the extent Defendant raises unreasonable objections to the examples above, the State respectfully requests a pretrial ruling on their potential admissibility. The Court should instruct the jury that opening statements are not evidence, which will cure any prejudice in the unlikely event that these exhibits are not admitted into evidence.

Wherefore, for the foregoing reasons the State respectfully requests this Court allow the State to use certain exhibits as described herein, during opening statement.

Respectfully Submitted,

/s/Erlinda O. Johnson

Kari T. Morrissey

Erlinda O. Johnson

Special Prosecutors

First Judicial District

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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 24th day of June 2024.

/s/Erlinda O. Johnson
Erlinda O. Johnson