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Santa Fe County
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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 3 TO EXCLUDE IRRELEVANT EVIDENCE AND WITNESSES

COMES NOW the State of New Mexico by and through its Special Prosecutors Kari T. Morrisey and Erlinda O. Johnson and hereby moves this Court for an *in limine* order excluding irrelevant evidence and certain defense witnesses and in support thereof submits the following.

INTRODUCTION

On October 21, 2021, the defendant Alexander Baldwin shot and killed Halyna Hutchins during a rehearsal while filming the movie Rust. After the shooting, the Santa Fe County Sheriff's Department (SFCSD) initiated a criminal investigation. The investigation continued for well over a year. In January 2023, the State filed charges against the defendant for his role in the shooting death of Ms. Hutchins. Sometime in 2022, the First Judicial District Attorney's office sought the appointment of a special prosecutor to assist in the prosecution of the case. Also, sometime between 2022 and early 2023, private Investigator Robert Schilling was retained to assist special prosecutors in the investigation. In April 2023, the State dismissed the charge against the defendant, pending further investigation.

In January 2024, after more investigation was conducted, the State refiled charges against the defendant. The case is now set for trial on July 9, 2024.

ARGUMENT

I. The Court Must Exclude All Evidence and Argument about the Quality of the Investigation and Witness Robert Schilling

Ordinarily, a trial court should not allow a defendant to offer evidence about the quality of the pretrial investigation. *United States v. McVeigh*, 153 F.3d 1166, 1192 (10th Cir. 1998) *overruled on other grounds by Hooks v. Ward*, 184 F.3d 1206 (10th Cir. 1999). The defense may not put "the government on trial" by suggesting "there might have been something more the government perhaps could have done" to identify additional evidence. *Id.* A defendant is not allowed to engage in unfounded speculation that the government's investigation was "shoddy" or "slanted." *Id*. Such evidence is irrelevant. Rule 11-401 NMRA 2012.

The quality of the state's investigation does not make any fact of consequence in a case "more probable or less probable that it would be without the evidence." *Id.* Such evidence would also confuse the issues and mislead the jury. *See* Rule 11-403 NMRA 2012; *McVeigh*, 153 F.3d at 1192 (noting such evidence "would inevitably divert the jury's attention from the issues of the trial."). The general rule is that evidence of alleged deficient investigative work is inadmissible because it is not a jury's function to "determine whether the government's investigation [was] . . . good or bad." *United States v. Veal*, 23 F.3d 985, 989 (6th Cir. 1994). Accordingly, the Defendant should be prohibited from arguing or introducing evidence relating to the purported quality of the investigation.

Indeed, to that end, the defense intends to call Robert Schilling for the purpose of criticizing the law enforcement investigation. According to Robert Schilling's pretrial interview, in his opinion, the SFCSD Crime Scene Technician was overwhelmed during the investigation. It is uncertain how Mr. Schilling arrived at this opinion since he was not asked to assist until months after the October 21, 2021, shooting. Mr. Schilling also opined that delay in obtaining a

search warrant for a prop truck and the movie set's ammunition supplier were poor decisions by law enforcement. Finally, according to Mr. Schilling, the SFCSD exercised poor judgment by releasing information to the media before all witnesses were interviewed. In sum, Mr. Schilling's testimony amounts to a critique of the law enforcement investigation. This type of testimony is irrelevant and must be excluded. Even if found to be relevant, it must still be excluded because its probative value is far outweighed by its prejudicial effect because it is misleading, speculative and confusing. It bears repeating, Mr. Schilling did not participate in the law enforcement investigation. In fact, he did no investigation on the case. This is the sort of testimony the *McVeigh,* Court envisioned as improper and subject to exclusion. Accordingly, this Court must exclude Mr. Schilling's testimony as well as any other evidence and argument about the quality of the state's investigation.

II. Court Must Exclude the Testimony of Sheriff Adan Mendoza as Irrelevant

Only relevant evidence is admissible. *See* Rule 11–402 NMRA 2012. "Evidence is relevant if A. it has any tendency to make a fact more or less probable than it would be without the evidence, and B. the fact is of consequence in determining the action." Rule 11–401 NMRA 2012. Evidence found to be relevant may be excluded "if its probative value is substantially outweighed by a danger of ... unfair prejudice." Rule 11–403 NMRA 2012.

Moreover, the New Mexico Court of Appeals has explained that "[r]elevance does not exist in a vacuum; instead, it is the logical relationship between evidence and a proposition in issue that the party seeks to prove." *State v. Duncan,* 1990-NMCA-063, ¶ 18, 830 P.2d 554, 558. In other words, if there is no logical connection between the evidence and its use in proving something of consequence, it is not relevant. *Id.*

In this case, the testimony of SFCSD Sheriff Adan Mendoza is irrelevant. Sheriff Mendoza was not directly involved in the investigation. His only role was to hold a couple of press conferences and review the reports submitted to the District Attorney's Office. The State has reason to believe the defense intends to call Sheriff Mendoza to inject confusing and misleading information into the trial by eliciting from the Sheriff information about his press conferences about the investigation. This type of testimony is irrelevant, and Sheriff Mendoza must be excluded from testifying at trial.

III. Court Must Exclude any Argument, Mention or Evidence Concerning the State's Dismissal of Defendant's First Case filed in D-101-CR-2023-0039

Discretionary decisions made by a prosecutor are not admissible. For example, the decision to *nolle prosequi* Defendant Baldwin's 2023 case is not admissible. These types of prosecutorial decisions are based on strategy, not strength of the evidence. *See, e.g., State v. Ericksen,* 1980-NMCA-029, ¶ 7, 607 P.2d 666 ("State's conduct [filing of *nolle prosequi* to circumvent disqualification limitations] was manipulation...to obtain a favorable judge, or 'forum shopping' "); *State v. Edwards,* 1981-NMCA-119, 637 P.2d 572 ("State filed to *nolle prosequi* the indictment [on the basis that the indictment unintentionally did not mention a firearm enhancement and that the judge was thus leaning towards blocking the submission of the firearm enhancement interrogatory] and obtained a second indictment charging defendant with a second degree murder with the use of a firearm").

The State's discretionary decision to file a *nolle prosequi* as it relates to the 2023 case was a discretionary prosecutorial decision and any mention concerning the *nolle* and the reasons behind it are irrelevant at trial and must be excluded pursuant to Rule 11-401. It is worth noting that the *nolle prosequi* was filed in the 2023 case after defense counsel asked the prosecutor to

consider a dismissal without prejudice in lieu of continuing the prosecution of the Defendant while ballistics testing continued.

IV. Court Must Exclude Evidence or Argument Designed to Garner Sympathy

The State respectfully moves this Court to exclude any evidence or argument designed to garner sympathy for the Defendant. Specifically, the State requests the Court prohibit Defendant and defense counsel from presenting evidence relating to Defendant's remorse, sympathy for the victim, or the impact that the events had on Defendant's life or his family. Relevant evidence must make a fact of consequence more or less probable to the determination of the action. Rule 11-401 NMRA 2012. If evidence is irrelevant, it is plainly inadmissible. Rule 11-402 NMRA 2021. However, even if evidence possesses some probative value, if it unfairly appeals to the jury's sympathies, it may be inadmissible under Rule 11-403. *Payne v. Tennessee,* 501 U.S. 808, 856-57 (1991) (Stevens, J., dissenting); *State v. Anderson,* 1994-NMSC-089, ¶ 63, 881 P.2d 29; *Carter v. Hewitt*, 617 F.2d 961, 972 (3d Cir. 1980). Similarly, arguments designed solely to arouse passion or prejudice are improper. *Viereck v. United States*, 318 U.S. 236, 247 (1943).

The State is alleging, in part, that Defendant acted without due caution and circumspection in shooting and killing Ms. Hutchins. There is no evidence that he intentionally killed Ms. Hutchins and harmed Mr. Souza. If the defendant were to claim he feels remorse, his remorse or any indirect reference to it is inadmissible at trial. It would not make any fact of consequence more or less probable but would serve solely to garner sympathy for Defendant. This sympathy would be an invitation for nullification, implying Defendant is not a "bad guy" and has suffered enough for his transgressions. This is outside the province of the jury and should be excluded.

V. The Court Must Preclude Defense Counsel from Presenting Biographical Information

The State requests the Court order that defense counsel be prohibited from speaking (directly or indirectly) to the venire panel or to the seated jury at any time during the above-captioned proceedings about counsel's historical narrative (i.e. schools attended, political commentary and philosophy, athletic achievements, appearances before the media, charitable affiliations, personal achievements, qualifications, professional background and insight, prior military service, positions as former U.S. Attorney or state prosecutor, decorations, prior associations, etc.). In particular, defense counsel should be prohibited from mentioning their past employment as a United States Attorney or with a state prosecutor's office. Such autobiographical references by trial counsel would not be relevant under Rule of Evidence 11-401; and they would be confusing and misleading under Rule 11-403 by distracting the jury from its duty to evaluate the facts and evidence relevant to the charged conduct.

Autobiographical references of trial counsel bear no relation to Defendant's or the criminal conduct with which he is charged and cannot by definition make the existence of any fact that is of consequence in the case more or less probable. Accordingly, the above references should be excluded as irrelevant under Rules 11-401 and 11-402. Furthermore, any autobiographical references by trial counsel should be barred under Rule 11-403, which provides for the exclusion of evidence whose "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." The presentation of the personal histories of trial counsel would improperly bolster the arguments and presentation of counsel and create a sideshow designed to distract the jury from its sworn duty. Consequently, the State requests that the Court prohibit defense counsel from making autobiographical references to the venire panel or to the jury during the entirety of these proceedings, to include closing argument.

VI. Court Must Prohibit Defense from Arguing Inappropriate Legal Standards

The State respectfully moves this Court for an order prohibiting Defendant from arguing or improperly stating the law. Specifically, the Court should preclude counsel for the defendant from arguing that according to New Mexico law, the only way the jury may find defendant guilty is if the state proves beyond a reasonable doubt that defendant knew the revolver contained a live bullet.

Under New Mexico law, involuntary manslaughter is an unintentional killing, *State v. Henley,* 2010–NMSC–039, ¶ 14, 148 N.M. 359, that consists of an "unlawful killing of a human being without malice ... committed in the commission of an unlawful act not amounting to felony, or in the commission of a lawful act which might produce death in an unlawful manner or without due caution and circumspection." NMSA 1978 § 30–2–3; *State v. Henley,* 2010–NMSC–039, ¶ 14, 148 N.M. 359. (internal quotation marks and citations omitted). The jury instruction on involuntary manslaughter "states that the defendant "'should have known of the danger involved by [his or her] actions.'" *Id.* at ¶ 16 (quoting UJI 14–231 NMRA). "To be convicted of involuntary manslaughter, a defendant must have been aware of the risk caused by his or her conduct and continued to act." *Id*. While it is true, caselaw requires proof of subjective knowledge*, see id*. at ¶ 17, that knowledge requirement is proven with evidence that defendant was aware of the risk caused by his conduct and continued to act with willful disregard of the rights or safety of others and in a manner which endanger[s] any person or property. *See generally Henley,* 2010–NMSC–039, at ¶ 16; *See State v. Harris, State v. Harris,* 1937 -NMSC-046, 41 N.M. 426, 428.

To argue that the only way the State may prove its case against the defendant is by proving he knew the gun used to shoot Ms. Hutchins contained a live bullet. That is a patent

misstatement of the law, and this Court must preclude the defense from representing such. Misstatements of the law are an intrusion upon the guarded provinces of the jury, and it is well established that the jury is not to be subjected to unauthorized invasions. *Remmer v. United States*, 347 U.S. 227, 229 (1954). To the extent that the jury is tasked with being triers-of-fact, their ability to adequately try those facts is significantly hampered when counsel is allowed to improperly introduce and outline the legal standards and burdens which the to-be-introduced evidence will be subject. *See Bland v. Sirmons*, 459 F.3d 999, 1024 (10th Cir. 2006) (in evaluating counselor's improper statements, "the ultimate question is whether the jury was able to fairly judge the evidence" in light of the counselor's conduct). While certainly the statements and arguments of counsel carry (generally) less weight with the jury than this Court's instructions, *see Boyde v. California*, 494 U.S. 370, 384 (1990), misrepresentations by counsel can have a decisive and lasting impact which goes beyond the curative limitations of an instruction to the jury. *Id*.

To that end, and in order to avoid the difficulties of evaluating a curative instruction ex post facto, the State submits that the preservation of the jury's ability to fairly weigh the evidence in this case is contingent on minimizing the likelihood that defense counsel is unable to misstate the applicable law. Defendant should not provide a confusing illustrations to the jury. Misstatements of the applicable legal standards to the jury are likely to confuse or mislead the jury and encroach on the Court's role in instructing on the law. "[I]nstructing the jury as to the applicable law is the distinct and exclusive province of the court." *United States v. Moran*, 493 F.3d 1002, 1008 (9th Cir. 2007). While it is appropriate for counsel to argue that the jury should apply the law to the facts in a particular way, it is not appropriate to redefine what the law is. *Taylor v. Kentucky*, 436 U.S. 478, 488 (1978) (counsel's arguments cannot be substitutes for

instructions by the court). Moreover, the Court will read to the jury an instruction that defines the elements of involuntary manslaughter. Confusion subsequent to counsel's misstatement of the law would ultimately undermine the Court's instruction; at any rate, the instructions require no supplementation from counsel. Counsel for the defense should be prohibited from arguing or implying that according to the law the only way the jury may find guilt is by proof that defendant knew the gun contained a live bullet. Such a narrow reading of the law is an incorrect interpretation and invades the province of the Court.

Wherefore, for the foregoing reasons, the State respectfully requests this Court grant this motion *in limine* to exclude irrelevant evidence and Defense Witnesses Adan Mendoza and Robert Schilling.

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 24th day of June 2024.

/s/*Erlinda O. Johnson*
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