

**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 2 TO EXCLUDE UNIVERSITY OF NEW MEXICO  
HOSPITAL RECORDS OF MS. HUTCHINS' MEDICAL TREATMENT**

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 excluding medical records of Ms. Hutchins' medical treatment on October 21, 2021, at the University of New Mexico Hospital 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, Ms. Hutchins was transported to the University of New Mexico Hospital (UNMH) trauma center for medical care. The State disclosed to the defense the medical records from UNMH. The defense also interviewed two of the physicians who treated Ms. Hutchins at UNMH's emergency room.<sup>1</sup>

The State submits that admission of Ms. Hutchins' medical records, in a vacuum, is improper as they contain hearsay which excludes them from Rule 11-803(6)'s hearsay exception and the probative value of their admission is sufficiently outweighed by their prejudicial effect,

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<sup>1</sup> The State made one of the physicians available for a pretrial interview. However, the defense did not request an interview of Dr. Alvarez, the other physician. The State learned from UNMH counsel that the defense had independently spoken with Dr. Alvarez.

pursuant to Rule 11-403 NMRA, as they would be misleading to a jury and cumulative of the testimony to be presented by one or both of the emergency room treating physicians (Dr. Bianca Alvarez or Dr. David Wachter). Therefore, this Court must exclude the medical records.

### ARGUMENT

For any evidence to be admissible, the evidence must first be relevant. *See* Rule 11-402 NMRA 2017. Evidence is relevant if it has any tendency to make a fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Rule 11-401 NMRA 2017. “Whatever naturally and logically tends to establish a fact in issue is relevant.” *Wright v. Brem*, 1970-NMCA-030, ¶ 19, 81 N.M. 410 (internal citations omitted). “There is, and can be, no fixed rule delineating relevant and irrelevant evidence. The problem must be decided on a case-by- case basis.” *Ohlson v. Kent Nowlin Constr. Co.*, 1983-NMCA-008, ¶ 20, 99 N.M. 539.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. Rule 11-403 NMRA 2017. The trial court “is vested with great discretion in applying [Rule 11-403] ...” *State v. Rosales*, 2004-NMSC-022, ¶ 12, 136 N.M. 25 (internal citations omitted)’ *see also* *Lozoya v. Sanchez*, 2003-NMSC-009, ¶ 37, 133 N.M. 579 (finding that “the district court properly exercised its discretion in excluding the evidence under Rule 11-403, because evidence of the foreclosure proceedings and repossession may have given the jury the wrong impression”). “Unfair prejudice, in the context of Rule 11-403, means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” *State v. Bailey*, 2015-NMCA-102, ¶ 20, 357 P.3d 423.

In this case, while the UNMH medical records of Ms. Hutchins' treatment could be relevant, the records, in a vacuum, violate Rule 11-403 because they are confusing, misleading and cumulative. First, they are confusing because they are highly technical and complicated in that the records are replete with technical medical terminology which a lay person may find difficult to understand. The records are also misleading because without the testimony of an expert or one of the treating physicians, they could be misinterpreted—a goal which the defense hopes to achieve with their admission. Lastly, the records are cumulative of the testimony of either of the treating emergency room physicians (Dr. Bianca Alvarez or Dr. David Wachter) whom the State intends to call at trial. Accordingly, this Court must exclude them pursuant to Rule 11-403 NMRA.

Additionally, the records are also inadmissible because they do not satisfy the business records exception pursuant to 11-803(6). In order to be admissible under Rule 803(6), a record must be “transmitted by” a declarant “with knowledge” in the ordinary course of “regularly conducted business activity. . .” Rule 11-803(6) NMRA 2014. As it relates to hospital medical records, this encompasses declarants like nurses or doctors “who report to the recordkeeper as part of a regular business routine in which they are participants.” *Petrocelli v. Gallison*, 679 F.2d 286, 290 (1st Cir. 1982).

Here, while the defense may argue the UNMH records satisfy Rule 11-803(6)'s exception as business records, the State submits that these particular records do not satisfy the requirements of Rule 11-803(6) in that the records contain double hearsay. Double hearsay in the context of a business record exists when the record is prepared by an employee with information supplied by another person. If the source of the information is an outsider . . . Rule 803(6) does not, by itself, permit the admission of the business record. *Wilson v. Zapata Off-Shore Co.*, 939 F.2d 260, 271

(5th Cir. 1991); *see also TK-7 Corp. v. Estate of Barbouti*, 993 F.2d 722, 729 (10th Cir.1993) (finding double hearsay in the context of a business record exists when the record is prepared by an employee with information supplied by another person).

The records at issue here contain statements about how Ms. Hutchins sustained the gunshot wound to the chest while working on a movie set in Santa Fe which was relayed by unknown third parties. The records also contain information relayed to doctors by airflight crew who transported Ms. Hutchins. Absent an applicable hearsay exception for each of the outsider statements, these statements constitute hearsay provided to the attending emergency room physician by an outsider. Therefore, making the records inadmissible. *See State v. McClagherty*, 2003-NMSC-006, ¶ 19, 133 N.M. 459, 64 P.3d 486 (Multiple hearsay requires that all statements be non-hearsay or fall within an exception to the rule for any statement to be admissible).

Moreover, the admission of the records would mislead the jury and lead to confusion. The records contain medical information from the trauma surgeons who attended to Ms. Hutchins. The records contain highly technical and complicated information with medical opinions which require the testimony of either the treating physicians or an expert. *Galloway v. Horne Concrete Const.*, 524 Fed.Appx. 865, 870 (4th Cir. 2013) (when an issue or claim involves a complicated medical question testimony of a medical expert is required). Accordingly, it would be highly confusing and misleading, in contravention of Rule 11-403, to allow the introduction of the medical records. Therefore, the Court must exclude them.

Wherefore, for the foregoing reasons the State respectfully requests this Court preclude the admission of Ms. Hutchins' UNMH medical records.

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

Erlinda O. Johnson