

**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 6 TO PRECLUDE ACCUSATIONS OF  
PROSECUTORIAL MISCONDUCT**

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 precluding defense counsel from, at trial, making the numerous personal attacks and allegations of misconduct and constitutional violations which they have lodged against the State during pretrial litigation 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. The defendant was subsequently charged with involuntary manslaughter. The current indictment issued in January 2024. In February 2024, the defense requested a speedy trial and therefore the Court scheduled the matter for trial to commence on July 9, 2024. The State has made numerous disclosures of discovery. In some instances, disclosures have been duplicative. While some disclosures were inadvertently delayed, the defense nevertheless argued the State suppressed evidence.

The defense sees shadows where none exist and have embarked on a campaign of personal attacks and allegations of prosecutorial misconduct against the prosecution. In fact,

every single motion filed by the defense includes personal attacks, in some form, and allegations of prosecutorial misconduct against the prosecution team. The motions wherein these issues and allegations have been made will have been ruled upon by the Court by the time trial commences. There is no place in a jury trial for defense counsel to raise allegations of misconduct and constitutional violations raised in Defendant's Pretrial Motions because this evidence is irrelevant at trial.

## **ARGUMENT**

### **Rules 11-401 and 11-402**

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. "The rules of evidence contemplate the admission of relevant evidence, and the exclusion of irrelevant and potentially prejudicial evidence." *Train v. City of Albuquerque*, 629 F.Supp.2d 1243, 1247 (D.N.M. 2009). Relevant evidence is evidence "to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in determining the action." Irrelevant evidence, or that evidence which does not make a fact of consequence more or less probable, however, is inadmissible. "Irrelevant evidence is not admissible." Rule 11-401 NMRA 2012.

### **Rule 403**

Evidence found to be relevant may be excluded "if its probative value is substantially outweighed by a danger of ... unfair prejudice confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Rule 11-403 NMRA 2012.

If evidence is found to unfairly appeal to the jury's sympathies or designed solely to arouse passion or prejudice of the jury is inadmissible. *See 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).

### **Jury Nullification**

The tactic of defense counsel suggesting, encouraging, or inviting jury nullification has been expressly prohibited by courts. *See United States v. Gonzales*, 596 F.3d 1228, 1237 (10th Cir. 2010) ("we disapprove of the encouragement of jury nullification"), *citing United States v. Trujillo*, 714 F.2d 102, 106 (11th Cir. 1983) (While we recognize that a jury may render a verdict at odds with the evidence and the law, neither the court nor counsel should encourage jurors to violate their oath.); *Crease v. McKune*, 189 F.3d 1188, 1194 (10th Cir. 1999) (there is no right to jury nullification), *citing United States v. Thomas*, 116 F.3d 606, 615 (2d Cir. 1997); *United States v. Rith*, 164 F.3d 1323, 1338 (10th Cir. 1999). Thus, the law is clear that there is no right to jury nullification. Moreover, it is also clear that neither the Court nor the parties may suggest or invite jury nullification.

In this case, given the grandstanding in which the defense has engaged in its relentless campaign of lodging not only personal attacks against the prosecution but also of alleging prosecutorial misconduct in nearly every pleading filed, it is expected they will continue these tactics at trial, in front of a jury. The Court should exclude the allegations of misconduct and constitutional violations raised in Defendant's numerous Pretrial Motions because this evidence is irrelevant, more unfairly prejudicial than probative, and would serve only to invite jury nullification.

Allegations that: 1) the accidental discharge test conducted by the FBI violated the defendant's constitutional rights; 2) delayed discovery disclosures were designed to deprive the defendant of evidence and a violation of his constitutional rights; 3) that the prosecution conspired with law enforcement to intentionally destroy parts of the firearm to deprive the defendant of exculpatory evidence; 4) the meeting between Mr. Ziegler and Mr. Haag was intended to deceive the trier of fact regarding the microscopic toolmarks on the tip of the sear (that do not affect the functionality of the gun) are not relevant because they do not make it more or less probable that Defendant committed the crime of involuntary manslaughter on October 21, 2021.

Defendant's baseless factual allegations are relevant to whether his rights were violated as it relates to his motion pursuant to *Brady v. Maryland*, 373 U.S. 83, 114 (1963), his motion to dismiss the grand jury indictment and his motion to dismiss for destruction of evidence, but they will not be relevant to any question presented to the jury at his trial. *See, e.g., United States v. Allerheiligen*, No. 97-40090-01-DES, 1998 WL 918841, at \*4 (D. Kan. Nov. 19, 1998) (excluding similar evidence and explaining that “[l]egal issues contained in motions to suppress are to be decided by the courts”).

The admission of any of Defendant's factual allegations will create a distracting “minitrial” in which Defendant introduces legal arguments regarding prosecutorial misconduct, claims of constitutional violations, and law enforcement will not only have to testify about the evidence against Defendant, but also defend against charges of nefarious deeds and contrived conspiracies between witnesses and the prosecutors. The Court must not allow the trial to become a circus.

Wherefore, for the foregoing reasons, the State respectfully requests this Court preclude the defense from arguing prosecutorial misconduct and claims of violations of constitutional rights before the jury.

Respectfully Submitted,

/s/Erlinda O. Johnson

Kari T. Morrissey

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 24<sup>th</sup> day of June 2024.

/s/Erlinda O. Johnson

Erlinda O. Johnson