

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT**

STATE OF NEW MEXICO,

Plaintiff,

vs.

ALEXANDER RAE BALDWIN,

No. D-0101-CR-2024-0013

Defendant.

Judge Mary Marlowe Sommer

**STATE OF NEW MEXICO'S EXPEDITED MOTION TO EXCLUDE DEFENSE
WITNESSES RYAN WINTERSTERN AND CHRISTOPHER ZOOK**

COMES NOW the State of New Mexico by and through Special Prosecutors Kari T. Morrisey and Erlinda O. Johnson and hereby respectfully moves this Court for an order excluding defense witnesses Ryan Winterstern and Christopher Zook, and in support thereof the State submits the following.

1. On January 19, 2024, a grand jury sitting in the First Judicial District issued a one count indictment, herein, against the Defendant Alexander Rae Baldwin, charging involuntary manslaughter (Negligent Use of a Firearm), in violation of NMSA 1978 §30-2-3(B) (1994) or in the alternative Involuntary Manslaughter (without due caution or circumspection).
2. On February 26, 2024, this Court issued a scheduling order setting deadlines. In the Order, the Court directed the parties to comply with their obligations pursuant to Rules 5-501 and 5-502 NMRA (2015).
3. The deadline for disclosing witnesses was May 6, 2024.
4. The deadline for finalizing pretrial interviews was June 5, 2024.

5. On June 24, 2024, the defense filed a trial witness list naming, for the first time, Ryan Winterstern as a defense witness. Besides being disclosed late, the defense failed to provide the State with a pretrial interview of Mr. Winterstern.

6. While the defense named Christopher Zook prior to the Court's deadline for disclosure of witnesses, the defense failed to provide the state with a pretrial interview of Mr. Zook.

7. When a defendant fails to comply with Rule 5-502, the Court may enter an order pursuant to Rule 5-505. *See State v. Ybanez*, 2013 WL 4527245, *4 (Ct. App. March 27, 2013) (unpublished opinion). Rule 5-505(B), states, in part,

If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from calling a witness not disclosed. . .

Rule 5-505(B) NMRA (2024).

7. Defendant has failed to comply with this Court's scheduling order setting deadlines for the disclosure of witnesses and pretrial interviews.

8. Despite requesting pretrial interviews of all the defense witnesses, the defense failed to make Mr. Winterstern and Mr. Zook available for pretrial interviews.

9. The defendant's failure to disclose Mr. Winterstern by the Court's deadline and failure to disclose witness statements by Messrs. Winterstern and Zook, at this juncture, requires exclusion of these defense witnesses.

10. "The decision to exclude evidence calls on judicial discretion to weigh all the

circumstances, including willfulness in violating the discovery rule, the resulting prejudice to the opposing party, and the materiality of the precluded testimony." *State v. Guerra*, 2012-NMSC-014, ¶ 33.

11. The deadlines in the scheduling order were properly set pursuant to the guidance set forth by the Supreme Court in *State v. Le Mier* (Trial courts shoulder the significant and important responsibility of ensuring the efficient administration of justice in the matters over which they preside). 2017-NMSC-017, 394 P.3d 959.

12. When scheduling order deadlines are violated, the Court may, in its discretion, suppress the testimony of witnesses for failing to list those witnesses in a timely fashion. *State v. Martinez*, 1998-NMCA-022, 954 P.2d 1198. Indeed, although preclusion of a witness is appropriate in limited circumstances, such circumstances are present when the defense has withheld information to gain a tactical advantage. *See State v. Sills*, 1998-NMSC-009, ¶ 43, 957 P.2d 51; *McCarty v. State*, 1988-NMSC-079, ¶ 16, 763 P.2d 360.

13. "A defendant's right to present evidence on [her] own behalf is subject to [her] compliance with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *State v. Sanders*, 1994-NMSC-043, ¶ 26, 117 N.M. 452, 459–60 (internal quotation marks and citation omitted).

14. The defense refused to disclose or even mention to the State its intention to add Mr. Winterstern until June 24, 2024. The defendant's strategy with this belated disclosure appears to be designed to gain a tactical advantage so that the State is unable to properly investigate defense witness Ryan Winterstern or his proposed statements.

15. The State is prejudiced by this calculated game of sandbagging less than

two weeks before trial is scheduled to commence. The defense could have notified the State it intended to call Mr. Winterstern well in advance of May 6, 2024, and disclosed Messrs. Winterstern and Zook's witness statements. The defendant's failure to do so has prejudiced the State. Therefore, the Court must exclude Messrs. Winterstern and Zook.

16. There is no conceivable reason why the defense did not timely disclose Mr. Winterstern or make him and Mr. Zook available for pretrial interviews. At this juncture in the process, the State is prejudiced by the late disclosure of Mr. Winterstern and the defendant's failure to make him and Mr. Zook available for pretrial interviews.

17. Accordingly, the Court must exclude defense witnesses Winterstern and Zook for failure to abide by the Court's scheduling order.

18. The State is filing this motion expedited pursuant to LR1-201(H) with the intention of having the matter decided quickly so that the parties will have adequate time to prepare for trial.

Wherefore, for the foregoing reasons the State respectfully requests this Court exclude the defendant's witnesses Ryan Winterstern and C. Zook.

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 26th day of June 2024.

/s/ Erlinda O. Johnson
Erlinda O. Johnson