

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,

PLAINTIFF,

VS.

ALEXANDER RAE BALDWIN III,

DEFENDANT.

No. D-0101-CR-2024-0013
Judge Mary Marlowe Sommer

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

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Counsel for Alec Baldwin

Defendant Alec Baldwin, by and through his attorneys, submits this response to the State's motion *in limine* number 8 to allow the State to use various photographs and videos as demonstratives during its opening statement.

ARGUMENT

Rather than conferring in good faith with the defense in an effort to reach agreement on the use of certain exhibits at trial that have yet to be entered into evidence, the State requests an "order" allowing it to circumvent the need for such cooperation. While the defense is (and always has been) open to a discussion about exhibits and anything else that would allow trial to proceed in an orderly manner, it opposes the State's request as written.

The State argues that "[t]he use of exhibits in opening statement is a routine and standard practice." However, absent a stipulation between the parties, the requested photographs and video clips may not be admitted during the State's opening statement because a proper foundation will not have yet been laid. *See, e.g., State v. Lopez*, 2018-NMCA-002, ¶ 31, 410 P.3d 226 ("Photographic evidence, a form of demonstrative evidence, 'must fairly and accurately represent the depicted subject in order to satisfy the foundation requirement for authentication of photographs.'" (quotation omitted)); *State v. Henderson*, 1983-NMCA-094, ¶ 8, 669 P.2d 736 (photographic evidence is admissible "when a sponsoring witness can testify that it is a fair and accurate representation of the subject matter, based on that witness's personal observation"); *State v. Garcia*, 2023 WL 4864997, at *5 (N.M. Ct. App. July 31, 2023) (holding photographs were properly admitted *after* sponsoring witness testified that they fairly and accurately depicted her personal observations).

The State cites unpublished federal cases allowing this practice, but tellingly does not cite a single New Mexico state court case allowing it. And the only case from New Mexico that the State does cite was from a New Mexico federal district court case, which allowed the use of

opening statement exhibits where the parties had an *advance* agreement governing the use of opening statement exhibits. *See United States v. DeLeon*, 2018 WL 4184236, at *1 (D.N.M. Apr. 12, 2018).

The bottom line is simple: the State cannot use unadmitted exhibits in its opening statement. It would violate the evidentiary rules to use exhibits in an opening that may be inadmissible or never admitted, and it would be highly prejudicial to permit the State to use those documents as if they will be evidence in the case when there's not yet a proper foundation for admissibility. It may be that the State and the defense can work out an agreement on this matter, but the State refused to try. Absent such an agreement, the State's request is improper and should be denied.

Date: July 1, 2024

Respectfully submitted,

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By: /s/ Luke Nikas

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2024, a true and correct copy of the foregoing brief was emailed to opposing counsel.

/s/ Heather LeBlanc _____
Heather LeBlanc