

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* 7  
TO PROHIBIT USE OR TESTIMONY OF OHSB SUMMARY OF INVESTIGATION**

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Defendant Alec Baldwin, by and through his attorneys, respectfully submits this response to the State's motion *in limine* number 7 to exclude evidence and testimony related to findings of the Occupational Health and Safety Bureau (OHSB).

#### ARGUMENT

The State argues the Court should exclude the use of and testimony concerning the OHSB Summary of Investigation report. The State's request is both unfounded and premature.

The OHSB report meets the criteria for a public record under 11-803(8), and "the question of a document's accuracy goes to the weight of the evidence, not its admissibility." *Apodaca v. AAA Gas Co.*, 2003-NMCA-085, ¶ 59, 73 P.3d 215 ("The record reflects, however, that the trial court overruled all of Plaintiffs' objections by finding that the entire OSHA report was admissible as a public report under Rule 11-803(H) NMRA 2003. The trial court did not abuse its discretion in finding the report sufficiently trustworthy for the jury to consider. . . ."); *West v. Valero Renewable Fuels Co., LLC*, 2021 WL 5113968, at \*1 (N.D. Ind. Nov. 3, 2021) ("Courts have, generally, found that Rule 803(8) allows the admission of OSHA reports."). Indeed the State, while addressing the hearsay exception under 11-803(6) at length, hardly touches on 11-803(8), instead attacking the reliability of the report simply because the report reached different factual conclusions than the prosecutors. To the extent the State disputes these factual findings, it can offer competing or additional evidence for the jury to consider. But the Court should not exclude relevant evidence just because it does not fit the State's narrative.

The State also urges, in a single sentence, that the exception is not met because OHSB is a "law enforcement agency" and therefore the report is barred under 803(8)(b). But that provision applies to "a matter observed while under a legal duty to report." Notably, in *State v. Linam*, 1979-NMSC-004, 600 P.2d 253, the Supreme Court emphasized that the exclusion of public records under the law enforcement exception "is aimed at reports of law enforcement personnel engaged

in investigative and prosecutorial activities where the officer himself should testify.” *Id.* ¶ 10; *United States v. Mendez*, 514 F.3d 1035, 1044 (10th Cir. 2008) (“This exclusion applies when law enforcement personnel create records for the purpose of prosecution.”); *accord State v. Christian*, 1995-NMCA-027, ¶ 18, 895 P.2d 676, *abrogated on other grounds by State v. Aragon*, 2010-NMSC-008, 225 P.3d 1280. The more apt provision here is 803(8)(c), which permits the admission of “factual findings from a legally authorized investigation” “against the government in a criminal case.” The State offers no support for its inaccurate, blanket assertion that the OHSB employees conducting a civil investigation are “law enforcement personnel” within the meaning of the exception.

Further, to the extent the report presents “double hearsay” concerns—though the State has identified none with specificity, and the above authorities *admitted* OSHB reports as evidence—the Report can be narrowly redacted if there are any instances of hearsay not subject to an exception. Specifically, if Baldwin seeks to introduce statements from the OHSB report that are the subject of a double hearsay objection, it will (1) identify the specific statements in the OHSB report that are being introduced, (2) explain the purpose(s) for which those statements are being introduced, and (3) specify the legal basis for admitting the statements (*e.g.*, an applicable hearsay exception covering the specific statements and supporting legal authority) such that the Court can make an appropriate and fully informed ruling. If a specific statement is subject to a proper objection, then that statement can be redacted. But such a scenario would *not* justify throwing out the entire report.

There is no legal basis for excluding the OHSB report, so the State’s motion should be denied in full. If the Court rules otherwise, however, the testimony of Lorenzo Montoya should still be admitted. The purpose of the exception under which the State improperly urges the Court

exclude the report is that the investigating officer in those cases should testify. If the Court determines the OHSB is a law enforcement agency (it isn't), then Montoya should be permitted to testify about his investigation just as Corporal Alexandria Hancock and other officers will be permitted to testify about the conclusions of her investigation. As the State is aware, Montoya conducted an extensive investigation into the facts and circumstances at issue in this case. It would be improper for the Court to presuppose the testimony of Montoya will consist purely of legal conclusions (it will not), or that his testimony will be confusing. Moreover, to the extent the State disagrees with Montoya's factual testimony, it will have ample opportunity to cross-examine him, offer additional evidence, or attempt to contradict his testimony.<sup>1</sup> Put simply, if the Court excludes Montoya for the reasons put forth by the State, it must also exclude Corporal Hancock's testimony for the same reasons.

The Court should deny the motion.

Date: July 1, 2024

Respectfully submitted,

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By: /s/ Luke Nikas

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<sup>1</sup> The State argues at pp. 8-10 that the factual findings in the OHSB report are incorrect, but offers nothing other than the State's own testimony. That is not sufficient to question the reliability of the report, nor its findings, which can be tested at trial.

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**CERTIFICATE OF SERVICE**

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*/s/ Heather LeBlanc* \_\_\_\_\_  
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