

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,
Plaintiff,

v.

No. D-101-CR-2024-00013

ALEXANDER RAE BALDWIN III,
Defendant.

**ORDER ON DEFENDANT ALEC BALDWIN'S MOTION TO EXCLUDE THE
OPINIONS OF LUCIEN AND MICHAEL HAAG UNDER RULE 5-501 AND RULE 11-
702 NMRA**

THIS MATTER came before the Court on Defendant Alec Baldwin's Motion to Exclude the Opinions of Lucien and Michael Haag Under Rule 5-501 and Rule 11-702 NMRA, filed June 27, 2024 ("Motion to Exclude"). On July 1, 2024, the State responded to Defendant's Motion to Exclude. Having reviewed the briefing, and being otherwise fully advised, THE COURT FINDS, CONCLUDES, AND ORDERS:

1. The Court rules on the filed pleadings without hearing. See Rule LR1-305(D) NMRA.
2. The Court denies in part and reserves in part on Defendant's Motion to Exclude.
3. The Court reasons as follows:
4. As to Defendant's arguments pursuant to Rule 5-501 NMRA, the Court notes that a vast majority of Defendant's arguments are duplicative of those set forth in Defendant Baldwin's Expedited Motion for Relief for State's *Brady* and State Law Disclosure Violations Related to the Firearm, filed June 24, 2024 ("Expedited Motion"). As to firearm-related disclosures made prior to Defendant's June 24, 2024 Expedited

Motion, the Court will rule separately on Defendant's June 24, 2024 Expedited Motion.

5. As to Mr. Lucien Haag's statements made on June 24, 2024, the Court concludes that the disclosure of these statements are not untimely under the Court's February 26, 2024 Scheduling Order. See Mot. to Exclude 2-3 (referencing new statement disclosures). Per the witness's testimony on June 24, 2024, Mr. Haag revised certain opinions following a June 17, 2024 meeting. See Mot. to Exclude Ex. B, Tr. 36-37. Thus, given Mr. Haag's testimony took place within seven days of the meeting that resulted in Mr. Haag's change in opinion, the supplemental discovery disclosure does not violate the Court's Scheduling Order. See Feb. 26, 2024 Scheduling Order ¶ 1 ("Following initial discovery disclosures, the parties have a continuing duty to disclose and make available supplemental discovery within seven (7) days of the receipt of such information."); see generally Rule 5-505(A) NMRA (requiring supplemental discovery disclosures only to be "promptly" given).
6. As to Defendant's arguments pursuant to Rule 11-702 NMRA, the Court reserves ruling on Defendant's Motion to Exclude.
7. "The admissibility of expert testimony in New Mexico is guided by Rule 11-702 NMRA, which sets out three requirements: '(1) that the expert be qualified; (2) that the testimony be of assistance to the trier of fact; and (3) that the expert's testimony be about scientific, technical, or other specialized knowledge with a reliable basis.'" *Conception & Rosario Acosta v. Shell Western Exploration & Prod., Inc.*, 2016-NMSC-012, ¶ 22, 370 P.3d 761 (citation omitted).

8. Defendant argues that the “Haags opinions must also be excluded because they are based on an unreliable methodology. All expert opinions must be reliable and based on a scientifically recognized and reliable methodology.” Mot. to Exclude 4.
9. New Mexico appellate authority distinguishes scientific expert testimony from nonscientific expert testimony. *Cf. State v. Aleman*, 2008-NMCA-137, ¶ 6, 145 N.M. 79 (“Evidence is based on scientific knowledge if it is not self-explanatory, or if it is based on a scientific or medical principle.” (internal quotation marks and citation omitted)); *see generally State v. Ruffin*, 2019-NMCA-009, ¶¶ 18-28, 458 P.3d 445 (discussing distinction between scientific and nonscientific expert testimony).
10. Additionally, testing the reliability of nonscientific expert testimony differs from testing the reliability of scientific expert testimony. “[W]hen testing the reliability of non-scientific expert testimony, rather than testing an expert’s scientific methodology as required under *Daubert* and *Alberico*, the court must evaluate a non-scientific expert’s personal knowledge and experience to determine whether the expert’s conclusions on a given subject may be trusted.” *State v. Torrez*, 2009-NMSC-029, ¶ 21, 146 N.M. 331.
11. At this time, neither Mr. Michael Haag nor Mr. Lucien Haag have been offered to the Court to testify as an expert witness before the jury in the instant case. When an offer is made, outside the presence of the jury, the Court will entertain argument as to the scope of Messrs. Haags’ permissible testimony on grounds of reliability. However, the parties must present their arguments within the framework developed by New Mexico appellate authority. *See* Comm. Commentary to Rule 11-702 NMRA (“New Mexico has not adopted the changes made to the federal rule in 2000 to incorporate

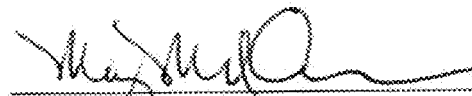
the requirements of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), in light of the differences between federal law and New Mexico law regarding whether *Daubert* applies to nonscientific testimony.”).

12. Nonetheless, New Mexico appellate authority instructs trial courts to err on the side of admissibility. See, e.g., *State v. Hughey*, 2007-NMSC-036, ¶ 17, 142 N.M. 83 (“If Defendant takes issue with the scientific conclusions of the State’s expert the remedy is not exclusion; ‘the remedy is cross-examination, presentation of rebuttal evidence, and argumentation.’” (citation omitted)).
13. Therefore, the Court reserves ruling on Defendant’s Motion to Exclude as to the reliability of Messrs. Haags’ expert testimony until the witnesses are offered as expert witnesses during trial.

CONCLUSION

IT IS THEREFORE ORDERED that Defendant Alec Baldwin’s Motion to Exclude the Opinions of Lucien and Michael Haag Under Rule 5-501 and Rule 11-702 NMRA is hereby DENIED IN PART and RESERVED IN PART.

IT IS HEREBY ORDERED.



MARY MARLOWE SOMMER
DISTRICT COURT JUDGE
DIVISION VIII

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date of acceptance for e-filing a true and correct copy of the foregoing was e-served on counsel registered for e-service in this matter as listed below.

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