

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

**BALDWIN'S RESPONSE TO THE STATE'S AMENDED MOTION FOR RECONSIDERATION
COMBINED EXHIBITS A - E**

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EXHIBIT A

AFFIDAVIT OF ERLINDA O. JOHNSON, Esq.

I, Erlinda O. Johnson, being of age of majority do hereby attest to the following:

1. I am a duly licensed attorney in the State of New Mexico, in good standing and authorized to practice before every court in the State of New Mexico, the United States Immigration Courts, the United States District Court for the District of New Mexico, the United States District Court for the Western District of Texas, the United States District Court for the District of Colorado and the United States Tenth Circuit Court of Appeals. I have been practicing law for over twenty-eight years.

2. My office is located in Albuquerque, New Mexico.

3. On April 16, 2024, I was appointed to work as a special prosecutor on *State v. Baldwin*, D-101-CR-2024-0013, as co-counsel for lead Special prosecutor Kari Morrissey.

4. Kari Morrissey did not give me an expert report referenced as the third Haag report prior to the defense's pretrial interviews (PTIs) of the experts (Mike and Luke Haag).

5. Kari Morrissey did not tell me the third Haag report existed prior to the first Haag PTIs.

6. Kari did not tell me about the third Haag report until May 21, 2024.

7. Had I known of the third Haag report, I would have disclosed it to defense counsel.

8. Approximately two or less weeks prior to trial, defense counsel emailed me, only, asking me to review a production provided by the District Attorney's Office to the defense pursuant to the Inspection of Public Records Act (IPRA), for discoverable material to disclose to the defense as the IPRA production had been heavily redacted by the issuing agency.

9. Kari Morrissey suggested to me that I ignore the discovery request from defense counsel.

10. I told Kari Morrissey I would not ignore defense counsel's email as I had my own ethical obligations to ensure the proper discovery was disclosed.

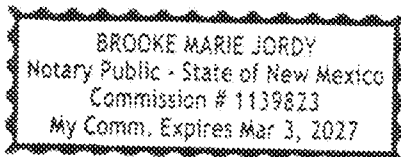
11. I then asked two private investigators to assist me in reviewing the nearly 5,000 pages of the IPRA production for the purpose of unredacting everything to which the defense was entitled. I conducted a review of the redacted IPRA material and compared it to the unredacted version. I also reviewed the materials the investigators unredacted. After conducting the review of the IPRA production, I uncovered additional items to disclose to the defense, which amounted to thousands of pages of documents.

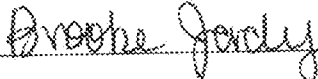
12. Kari Morrissey instructed me not to talk to defense counsel over the phone.
13. Trial began on July 9, 2024.
14. I resigned from the prosecution on July 12, 2024, during trial, because I learned of undisclosed evidence during trial and felt that my ethical obligations called for me to withdraw.
15. I did NOT resign from the case because I did not want a public hearing on the discovery issues.
16. During the lunch hour on July 12th, I advocated for Kari to dismiss the case against Mr. Baldwin.
17. During the break in the morning and lunch hour on July 12th, after conducting legal research and evaluating what I learned that day about what had transpired with the "Teske" ammunition evidence that had not been disclosed to the defense, I believed the right thing for the state to do was to dismiss the case on its own motion, but Kari Morrissey disagreed.

FURTHER AFFIANT SAYETH NOT.


Eriinda O. Johnson

SUBSCRIBED and SWORN to before me this 23 day of August 2024.




Public Notary

My Commission expires

March 3, 2027

EXHIBIT B

1 who cares deeply for his projects.
 2 The evidence will show, ladies and
 3 gentlemen, that like in many workplaces, there are
 4 people who act in a reckless manner and place other
 5 individuals in danger and act without due regard for
 6 the safety of others. That, you will hear, was the
 7 defendant, Alexander Baldwin, the lead actor on this
 8 film.
 9 You will learn that this movie began
 10 filming on or about October 6th, 2021, but the
 11 defendant did not arrive on set to begin working
 12 until about October 13th, and you will learn that
 13 prior to arriving on the set to work, he requested to
 14 be assigned the biggest gun available. So he was
 15 assigned this revolver, a replica of an 1873
 16 single-action revolver manufactured by Pietta
 17 Firearms in Italy.
 18 You will hear from Alessandro Pietta who
 19 will tell you he manufactured this gun. And he will
 20 tell you he manufactured it in 2015, and he will
 21 explain the quality control measures that Pietta
 22 Firearms follows in order to ensure that firearms
 23 that are manufactured by Pietta Firearms don't have
 24 any problems or issues.
 25 Mr. Pietta will tell you that this

1 received it from EMF and it was in perfect working
 2 order.
 3 The only thing that Mr. Kenney did to
 4 this gun was to insert the firing pin, because since
 5 it was a show gun, it didn't have a firing pin. But
 6 you'll learn that that's a very easy step. All he
 7 had to do was just insert the pin and that's it.
 8 And then Mr. Kenney had the firearms,
 9 this one and some other firearms, transferred to the
 10 set of Rust at the Bonanza Creek Ranch.
 11 And on October 13th, 2021, the defendant
 12 was supposed to have a training session with this gun
 13 and this young armorer. But you will see that during
 14 this training session, the defendant had somebody or
 15 a couple of people filming him while he's running
 16 around shooting this gun.
 17 You will learn, ladies and gentlemen, or
 18 you'll hear during this trial the use of the words
 19 "prop gun," and you'll learn a prop gun is this real
 20 gun. It's not a toy. It's not made of rubber. It's
 21 a real gun.
 22 You will also see evidence, ladies and
 23 gentlemen, that during the days before that fateful
 24 October 21st day, the defendant handled this firearm
 25 multiple occasions. You will see video footage of

1 firearm he himself manufactured, and that when Pietta
 2 sent it to EMF, which is the company that distributes
 3 firearms for Pietta Firearms in the United States,
 4 this gun was in perfect working condition.
 5 You will hear from Justin Neal, who is a
 6 representative of EMS -- EMF, excuse me, a company
 7 out of California that has historically been known to
 8 provide firearms to the movie industry. Mr. Neal
 9 will tell you that when EMF received this firearm in
 10 2017, it was in perfect working order, and, in fact,
 11 when EMF had this firearm, it was subjected to
 12 numerous quality control inspections because it was
 13 used as a show gun at gun shows.
 14 The evidence will show that in September
 15 of 2021, an individual by the name of Seth Kenney was
 16 contacted by the folks with Rust Production. They
 17 asked Mr. Kenney if he was -- he would be able to
 18 provide some firearms for the filming for use during
 19 the filming of Rust. You will learn that Mr. Kenney
 20 owns PDQ Firearm and Prop. It's a duly licensed
 21 firearms dealership. Mr. Kenney then contacted EMF
 22 and ordered several single-action replica revolvers.
 23 And in September -- or on September 29th, 2021,
 24 Mr. Kenney purchased this gun.
 25 And you will hear that Mr. Kenney

1 the defendant firing this firearm working perfectly
 2 fine. But you'll see evidence, ladies and gentlemen,
 3 that each time the defendant handled this firearm, he
 4 did not do a safety check with that inexperienced
 5 armorer. And you'll hear that the reason he didn't
 6 do a safety check is because he didn't want to offend
 7 her.
 8 The evidence you will see will paint a
 9 real live picture of a real live workplace where this
 10 defendant mishandled this gun.
 11 You will see him using this gun as a
 12 pointer to point at people, to point at things. You
 13 will see him cock the hammer when he's not supposed
 14 to cock the hammer. You will see him put his finger
 15 on the trigger when his finger's not supposed to be
 16 on the trigger.
 17 You will hear about numerous breaches of
 18 firearm safety with this defendant and this use of
 19 this firearm.
 20 And the evidence will show that on the
 21 morning of October 21st, 2021, the camera crew walked
 22 off set, and you will learn that one of the reasons
 23 that camera crew walked out is because they were
 24 concerned over safety breaches with the use of
 25 firearms.

1 likely not caused by the FBI accidental discharge
2 testing, but he could not exclude that as the source
3 of those lines.

4 Then a few weeks ago Mr. Haag will tell
5 you that he spoke with Mr. Ziegler, and he learned
6 how Mr. Ziegler had conducted the accidental
7 discharge test. Mr. Ziegler explained that he
8 affixed that firearm onto a fixed platform and then
9 struck the firearm on six different planes with a
10 rubber mallet.

11 And Mr. Ziegler explained to Mr. Haag
12 that he had not affixed the mallet to another fixed
13 device. Instead he did it freehand.

14 Mr. Haag will tell you with his 50-plus
15 years of experience as a forensic -- firearms
16 forensics expert, he opined or concluded that those
17 very tiny microscopic diagonal lines on the surface
18 of the trigger sear were likely caused by the FBI's
19 accidental discharge test.

20 The evidence will show, ladies and
21 gentlemen, that regardless of how those tiny
22 microscopic lines got on that trigger sear, these
23 firearms experts will tell you that those would not
24 affect the functionality of this firearm.

25 ~~At the end of this case, ladies and~~

1 ~~gentlemen, you are going to conclude and be convinced~~
2 ~~beyond a reasonable doubt that on October 21st, 2021,~~
3 ~~that gun the defendant had asked to be assigned~~
4 ~~worked perfectly fine, as it was designed, and that~~
5 ~~the fatal -- and one of the main problems that~~
6 ~~afternoon of October 21st was that the defendant~~
7 ~~didn't do a gun safety check with that inexperienced~~
8 ~~armorer.~~

9 He pointed the gun at another human
10 being, cocked the hammer, and pulled that trigger in
11 reckless disregard for Ms. Hutchins' safety.

12 And you will be convinced that the only
13 true and just verdict in this case, so that true
14 justice can be served, is a verdict of guilty to
15 involuntary manslaughter.

16 Thank you.

17 JUDGE MARLOWE SOMMER: Thank you,
18 Ms. Johnson.

19 Mr. Spiro?

20 MR. SPIRO: May I proceed?

21 Thank you, Your Honor.

22 Good morning.

23 This was an unspeakable tragedy but
24 Alec Baldwin committed no crime. He was an actor
25 acting, playing the role of Harland Rust. An actor

1 playing a character can act in ways that are lethal,
2 that just aren't lethal on a movie set.

3 These cardinal rules, they're not
4 cardinal rules on a movie set. And I don't have to
5 tell you much more about this because you've all seen
6 gun fights in movies. And the reason that can happen
7 is because safety is ensured before the actor.

8 On this movie set, there were people
9 responsible for ensuring the safety of the set in the
10 firearm. Those people failed in their duties. But
11 Alec Baldwin committed no crime.

12 The most critical issue in this case is
13 how a real bullet got on a movie set. The evidence
14 will show that real bullets are never supposed to be
15 on movie sets. Movie sets use dummies and blanks.
16 Movie sets use dummies, fake inert bullets that look
17 like real bullets, they don't go "Bang" for when you
18 want a close-up of the gun.

19 You can't tell them apart from live
20 bullets by looking at them, which is why live bullets
21 can be nowhere near a movie set. And if the director
22 wants a shot of the gun going, you know, "Bang,
23 Poof," there's blanks that they can use and those
24 blanks look nothing like real bullets, and they are
25 used for those shooting scenes.

1 And, you know, they'll play these videos
2 that they described of Alex, you know, firearm in the
3 movie going "Bang, Poof," you know, and people are
4 conditioned to seeing people firing weapons and
5 thinking that's a dangerous act, that's a dangerous
6 act. And they will play those videos and give you
7 that image to try to tarnish him in your eyes, but
8 that's not what happened here.

9 On this set there was a real bullet,
10 something that should never be on a movie set,
11 something which has nothing to do with making a
12 movie, and you will hear no evidence, not one word
13 that Alec Baldwin had anything to do with that real
14 bullet being brought onto that set.

15 The second critical issue in this case is
16 why did a real bullet get loaded into a prop movie
17 gun. It is undisputed that the bullet was loaded
18 into the gun by the armorer, the person on set whose
19 responsibility it was to ensure the gun was safe.

20 And so picture that moment of the armorer
21 placing a live bullet into that firearm. You know,
22 you'll hear the prosecutors say, you know, he did
23 this or he performed in a certain way. He picked out
24 the biggest gun as his prop. It's to tarnish him in
25 your eyes.

1 Q. You have gloves with you; right?
 2 A. Yes.
 3 Q. And in a perfect world you're trying to
 4 get to the evidence and the state of the evidence as
 5 quickly as possible; fair?
 6 A. Yes.
 7 Q. And so you did respond to the scene and
 8 the first item that you collected that ended up
 9 broken was the prop gun; right?
 10 A. Yes.
 11 Q. And when you got there, you knew that
 12 someone had touched it without gloves on; right?
 13 A. Yes.
 14 Q. You knew that when somebody collected it,
 15 they didn't take a photo; right?
 16 A. Yes.
 17 Q. But you did take that into evidence and
 18 that was sort of the first item in this case that you
 19 were collecting and entrusted to keep vouchered and
 20 maintained for the course of this investigation; is
 21 that fair?
 22 A. Yes.
 23 Q. And it was a critical piece of evidence;
 24 isn't that true?
 25 A. Yes.

1 Q. And by logging it, you also make it
 2 available for the defense so that we have visibility
 3 into what, in fact, you collected?
 4 A. Yes.
 5 Q. And one way you figure out, as you're
 6 going through a scene, what evidence is relevant is
 7 you can talk to your fellow officers; right?
 8 A. Yes.
 9 Q. You can talk to witnesses; right?
 10 A. I do not.
 11 As part of the -- I'm not an
 12 investigator; I'm a technician. So my concern is
 13 with the physical evidence. I don't do any of the
 14 interviews.
 15 Q. No, I know you don't do formal
 16 interviews, but you know in this case you did talk to
 17 Seth Kenney; right? You're not forbidden to speak to
 18 somebody who's at a scene?
 19 A. No, I do believe we had some casual
 20 conversations, yes.
 21 Q. Well, but there are times where a witness
 22 could say in your presence, Hey, that glove is very
 23 important, and they would say it to you and
 24 Corporal Hancock and you --
 25 MS. MORRISSEY: I object to the

1 Q. And so as you continue after that moment
 2 into the scene, you're looking for additional
 3 evidence; fair?
 4 A. Yes.
 5 Q. And physical evidence is critical
 6 evidence in an investigation; right?
 7 A. Yes.
 8 Q. Because, you know, witnesses and their
 9 memories can change, witnesses can say one thing one
 10 day and another another day, but physical evidence
 11 pretty much stays the same; right?
 12 MS. MORRISSEY: I'm just objecting to a
 13 compound question.
 14 Q. BY MR. SPIRO: Physical evidence stays
 15 the same; right?
 16 A. Yes.
 17 JUDGE MARLOWE SOMMER: All right. Thank
 18 you. He's corrected it.
 19 Q. BY MR. SPIRO: And you logged all the
 20 evidence you collected in this case?
 21 A. Yes.
 22 Q. And all the evidence collected by law
 23 enforcement in this case was ultimately logged by
 24 you?
 25 A. Yes.

1 hypothetical.
 2 JUDGE MARLOWE SOMMER: Overruled.
 3 Q. BY MR. SPIRO: As I was saying, you and
 4 Corporal Hancock could be at a scene and somebody
 5 could say, Hey, that glove was used and you, as a
 6 technician, would say, okay. That witness is
 7 pointing out that glove, that could be important.
 8 I'm going to -- I'm going to note that, and once I
 9 confer with Corporal Hancock, potentially take that
 10 into custody, to take an inventory of?
 11 A. Yes, that's something that could happen,
 12 yes.
 13 Q. And the other thing that you do is ---
 14 and you talked about this a little bit on your
 15 direct, which is you can learn information to decide
 16 what to forensically test; fair?
 17 A. Yes.
 18 Q. So in this case, for example,
 19 Mr. Baldwin's clothes had red on them and you tested
 20 it for blood; right?
 21 A. Yes.
 22 Q. And it turned out it was movie set blood;
 23 right?
 24 A. Yes.
 25 Q. Meaning, it wasn't actually blood; right?

1 Q. You don't recall? Really?

2 A. That is what I said.

3 Q. He -- well, it's information acted upon

4 is going to be my response.

5 But he told you the reason that he was

6 coming in is because he didn't trust law enforcement

7 on this case --

8 JUDGE MARLOWE SOMMER: Well, you know

9 what, she's going to hearsay and you're going to say

10 effect on listener?

11 MR. SPIRO: Yeah.

12 JUDGE MARLOWE SOMMER: Well, you're going

13 to have to lay your foundation better.

14 You are.

15 MR. SPIRO: Yeah.

16 Q. BY MR. SPIRO: All right. Let me ask

17 this question.

18 How come you didn't -- how come law

19 enforcement didn't voucher this with the rest of the

20 evidence in the Rust case?

21 A. I'm not sure what you mean by the word

22 "voucher."

23 Q. How come you didn't inventory it and put

24 it with all the rest of the evidence in the Rust

25 case?

1 Q. Do you have any reason to believe your

2 coworker showed this to the defense, given that it

3 wasn't put in the same inventory as the Rust case?

4 A. No.

5 Q. Did you or anyone from the Sheriff's

6 office ever tell the armorer or her lawyers that a

7 Good Samaritan came in after the verdict and gave you

8 this information?

9 A. I do not know.

10 Q. But you do agree, he did tell you that

11 Seth said this was the evidence from the shooting,

12 correct?

13 A. I don't recall what he stated, what

14 someone else stated.

15 Q. And you told him he "didn't have to write

16 a witness statement, law enforcement was going to

17 type up a report on it today," right?

18 A. I never stated any such thing about a

19 witness statement.

20 Q. He offered to provide a written witness

21 statement so that it was clear, did he not?

22 A. I do not recall that happening.

23 Q. Okay. Did you give him assurances that

24 you would type up a report on it?

25 A. I don't recall providing assurances to

1 A. I was instructed to put this in as doc

2 information case, which I did. And it's under that

3 case number.

4 Q. You buried it?

5 A. No.

6 Q. Your lieutenant --

7 A. There is a supplemental report on it and

8 that was placed into evidence.

9 Q. Did you ever turn that over to the

10 defense?

11 A. I -- I have not turned over anything to

12 the defense. My information is -- goes through the

13 Sheriff's office.

14 Q. Are you aware of whether the Sheriff's

15 office ever informed the defense that a Good

16 Samaritan came in and turned in this ammunition?

17 A. I do not know.

18 Q. When the defense came to view the

19 Starline Brass nickel primer live ammunition with

20 you, you didn't show them this, did you?

21 A. I did not have an evidence viewing with

22 the defense. That was my coworker.

23 Q. Your coworker didn't show this to the

24 defense, correct?

25 A. I do not know.

1 him.

2 Q. Did you tell him that you would write up

3 a report on it?

4 A. I don't recall doing that either.

5 Q. Do you deny it?

6 A. No.

7 Q. So when you testified earlier that you

8 never found the ammunition that killed Ms. Hutchins,

9 that wasn't true either, was it?

10 A. Can you rephrase the way you stated that?

11 Q. Sure.

12 As you sit here today, having had a Good

13 Samaritan turn in these 45 rounds into the precinct,

14 right?

15 A. If that's what you're discussing, yeah.

16 Q. Yeah.

17 You don't know whether or not you have in

18 your possession the live rounds that killed

19 Ms. Hutchins, do you?

20 A. The live round that killed Ms. Hutchins

21 has been fired. Are you asking me about a connection

22 between those live rounds and other ones?

23 Q. I'm asking you, as we've talked about at

24 great length, whether or not you -- Withdrawn.

25 I'm asking you isn't it the case that law

1 enforcement likely has the matching rounds to the
 2 ammunition that killed Ms. Hutchins?
 3 A: I do not know.
 4 Q: And you do not know because you made a
 5 doc report about this and did not put it with the
 6 rest of the Rust evidence, correct?
 7 A: Those rounds were not placed with the
 8 rest of the Rust evidence. Correct.
 9 Q: Nor were they sent to the FBI for testing
 10 with the Rust evidence, were they?
 11 A: No, they were not.
 12 MR. SPIRO: I have no further questions
 13 for this witness at this time.
 14 JUDGE MARLOWE SOMMER: Redirect.
 15
 16 REDIRECT EXAMINATION
 17 BY MS. MORRISSEY:
 18 Q: Ms. Poppell, are you a detective?
 19 A: No, I am not.
 20 Q: Did you interview any of the witnesses in
 21 this case?
 22 A: No, I did not.
 23 Q: You didn't interview Mr. Baldwin?
 24 A: No.
 25 Q: You didn't interview Ms. Gutierrez?

1 MR. SPIRO: Objection. Leading.
 2 Objection. Irrelevant.
 3 JUDGE MARLOWE SOMMER: Overruled.
 4 Overruled.
 5 Q: BY MS. MORRISSEY: Please answer.
 6 A: No, I had no knowledge of that.
 7 Q: Now, to be clear, is Mr. Baldwin charged
 8 with involuntary manslaughter for bringing live
 9 rounds on the movie set?
 10 A: No.
 11 Q: Is Mr. Baldwin charged with involuntary
 12 manslaughter for loading a live round into the gun?
 13 A: No.
 14 Q: Has a person already been tried and
 15 convicted for those things?
 16 A: Yes.
 17 Q: To try to clarify some points.
 18 Starline Brass, is that a brand of
 19 ammunition?
 20 A: Yes, it is.
 21 Q: Is it a brand of ammunition or a casing?
 22 A: It is a casing.
 23 Q: Okay. And the live rounds from the set
 24 of Rust had nickel primers; right?
 25 A: Yes.

1 A: No.
 2 Q: Mr. Spiro was asking you about the Good
 3 Samaritan who arrived at the Sheriff's department
 4 after the Gutierrez trial.
 5 Can you tell the members of the jury when
 6 the Gutierrez trial was?
 7 A: I don't recall exactly. I believe it was
 8 back in April.
 9 Q: Would you take end of February, beginning
 10 of March?
 11 A: Yes, that sounds more accurate.
 12 Q: Okay. Do you recall the Good Samaritan's
 13 name?
 14 A: I do not.
 15 Q: Would you recognize it if I said it to
 16 you?
 17 A: Yes.
 18 Q: Troy Teske?
 19 A: Yes, that was his name.
 20 Q: Are you aware that Troy Teske is a close
 21 friend of Hannah Gutierrez-Reed's father?
 22 A: No, I did not know that.
 23 Q: Are you aware that Troy Teske had his own
 24 motivations for wanting to place blame on Seth Kenney
 25 to help Hannah Gutierrez?

1 MR. SPIRO: Objection. Leading every
 2 question.
 3 JUDGE MARLOWE SOMMER: Overruled.
 4 Q: BY MS. MORRISSEY: So let me ask you
 5 this.
 6 When you went to PDQ to conduct your
 7 search, because you're not the detective, do you
 8 remember whether he had any surveillance video or
 9 not?
 10 A: I don't remember.
 11 Q: So with regard to Mr. Kenney, prior to
 12 the search of PDQ, did Mr. Kenney actually bring his
 13 own live ammunition to the police station?
 14 A: Yes.
 15 Q: So before you ever executed a search
 16 warrant, he went to the police station and said, I
 17 want to give you a sample of my live ammunition?
 18 A: Yes.
 19 Q: And you took that and you sent it to the
 20 FBI; right?
 21 A: Correct.
 22 Q: Now, with regard to ammunition,
 23 characteristics of some of this ammunition is it says
 24 "Starline Brass" on the top; right?
 25 And when I say "it says Starline Brass,"

1 Q. And Mr. Teske, Hannah Gutierrez's
 2 father's good friend, the Good Samaritan, he decided
 3 to bring this ammunition in after her conviction?
 4 MR. SPIRO: Objection.
 5 Q. BY MS. MORRISSEY: Is that right?
 6 MR. SPIRO: Objection. Assumes facts not
 7 in evidence. Misleading.
 8 JUDGE MARLOWE SOMMER: Overruled. Unless
 9 you want to come up and tell me.
 10 MR. SPIRO: Yes, I do.
 11 JUDGE MARLOWE SOMMER: All right. Come
 12 on up.
 13 (Sidebar discussion held.)
 14 MR. SPIRO: Obviously, some of this is
 15 besides the point because of the misconduct that's
 16 occurred, so let me just start off by saying that.
 17 I've never seen anything like this.
 18 Second thing I will say is her feeding
 19 the story to the witness. The witness already
 20 answered that exact same phrase and said, "I have no
 21 idea." So now she's just repeating saying assume
 22 this, assume that.
 23 JUDGE MARLOWE SOMMER: You did the same
 24 thing. Overruled.
 25 MR. SPIRO: But she hadn't denied it.

1 35 -- or I'm sorry -- .38 caliber ammunition that
 2 were in another room.
 3 Q. Did Mr. Kenney tell you that his personal
 4 firearm's a .38?
 5 A. No, I did not know that.
 6 Q. Okay. I'm going to show you what has
 7 been previously admitted as Defendant's A-23.
 8 Is this -- so when we're talking about --
 9 .45 caliber ammunition -- Well, let's back up.
 10 Is that the only caliber of live
 11 ammunition or suspected live ammunition found on the
 12 set of Rust?
 13 A. Yes.
 14 JUDGE MARLOWE SOMMER: Is that 21 you
 15 said?
 16 MS. MORRISSEY: 23. A-23.
 17 Q. BY MS. MORRISSEY: So if you find .38
 18 live ammunition, is that important to you?
 19 A. No.
 20 Q. Because .38 is not .45; right?
 21 A. Correct.
 22 Q. So the .45 caliber ammunition that you
 23 found at PDQ, is this where you found it?
 24 A. Yes.
 25 Q. Any mistaking that that would be live

1 MS. MORRISSEY: Madam Court Reporter,
 2 would you read back the last question, please?
 3 (The last question was read back by the
 4 court reporter.)
 5 Q. BY MS. MORRISSEY: Go ahead and answer.
 6 A. Yes.
 7 Q. In your experience, if Seth Kenney wanted
 8 to hide the fact that he had live ammunition at PDQ,
 9 he had plenty of time to get rid of it; right?
 10 A. Yes.
 11 Q. And you found some there; right?
 12 A. Yes.
 13 Q. And the photograph -- Well, was all the
 14 live ammunition in the same place?
 15 A. Yes.
 16 Q. Where was it found?
 17 A. It was in a box on the bottom of a stack
 18 labeled as live ammo.
 19 Q. And let me for completeness, was there
 20 live ammunition found in another room away from this
 21 box?
 22 A. I don't believe so, no.
 23 Q. Okay. Did you find any ammunition that
 24 was not .45 caliber anywhere else at PDQ?
 25 A. I believe there were two boxes of marked

1 ammunition?
 2 A. No.
 3 Q. Why?
 4 A. It was clearly marked as live ammunition
 5 in that box.
 6 Q. And let me ask you, Ms. Poppell:
 7 The ammunition that the Good Samaritan,
 8 Mr. Teske, the close friend of Hannah Gutierrez's
 9 dad, when he -- that ammunition that he brought to
 10 you after her conviction, you still have it?
 11 A. Yes.
 12 Q. You can bring it in here and you can show
 13 it to the jury; right?
 14 A. Yes.
 15 Q. And they can see for themselves that it
 16 does not match the live ammunition from the set of
 17 Rust; correct?
 18 A. Yes.
 19 Q. And that is obvious, just when you look
 20 at it, is it not?
 21 A. Yes.
 22 Q. Do you know how many boxes of dummy
 23 ammunition were provided to the set of Rust by
 24 Seth Kenney?
 25 A. If I recall correctly, just one.

1 Q. And you quickly dispensed of that
 2 concept; right?
 3 A. I don't think it was "quickly dispensed."
 4 It was investigated.
 5 Q. Okay. And fair to say that if that had
 6 happened, that would have been a far different case;
 7 right?
 8 A. It could have been. I don't --
 9 Q. And so then you turn to the idea of,
 10 well, somebody outside of Rust could have placed or
 11 been the cause of the ammunition ending up on set,
 12 and you interviewed Seth Kenney, I think you told
 13 this court yesterday, ten times at least; right?
 14 A. Yeah, I can't put an exact number, but it
 15 was a few times, yes.
 16 Q. Right. And that would have been
 17 different -- a different case also; right?
 18 A. If he had provided them?
 19 Q. Yeah.
 20 A. In relation to this case or in relation
 21 to the past case?
 22 Q. In relation to any case.
 23 A. It's hard to say.
 24 Q. Well, you were here for Investigator's --
 25 I'm going to do this again -- CST Poppell's testimony

1 "Answer: Yes.
 2 "And they can see for themselves that it
 3 does not match the live ammunition from the set of
 4 Rust; correct?
 5 "Yes.
 6 "And that it is obvious; just when you
 7 look at it, it is not?
 8 "Yes."
 9 Do you remember that testimony that you
 10 were sitting here for?
 11 A. Yes, I do.
 12 Q. And that turns out to be completely
 13 false; doesn't it?
 14 A. You're correct.
 15 Q. Mr. Kenney was just here. Did you see
 16 him in the hallway?
 17 A. I saw him in passing, yes.
 18 Q. You interviewed him I think you said over
 19 ten times; right?
 20 A. Yeah, I don't know the exact number.
 21 Q. 40-plus phone calls, I think?
 22 A. It was a lot.
 23 Q. Okay. And we have some of those text
 24 messages, and I'm going to put up defense -- Defense
 25 B on the screen.

1 yesterday, weren't you?
 2 A. Yes.
 3 Q. And you've had an opportunity to view
 4 this -- the .45 Starline Brass that came out of this
 5 package today; correct?
 6 A. No.
 7 Q. You haven't looked at it yet?
 8 A. No.
 9 Q. Okay.
 10 JUDGE MARLOWE SOMMER: She was excluded
 11 as a witness, I think.
 12 Q. BY MR. SPIRO: And are you aware, as you
 13 sit here, that there was 40, 45 long Colt Starline
 14 Brass nickel in the courtroom today from CST Poppell?
 15 A. I just found that out today.
 16 Q. Okay. So you were here for this
 17 testimony in this courtroom.
 18 "And let me ask you, Ms. Poppell, the
 19 ammunition that the Good Samaritan, Mr. Teske, the
 20 close friend of Hannah Gutierrez's dad, when he that
 21 ammunition that he brought in to you after the
 22 conviction, you still have it?
 23 "Answer: Yes.
 24 "Question: You can bring it in here and
 25 you can show it to the jury; right?"

1 And it's not working.
 2 MR. SPIRO: Okay. Thank you.
 3 Q. BY MR. SPIRO: Okay. And you see at the
 4 top, this is a screenshot that he's sending you;
 5 right?
 6 A. Yes.
 7 Q. And do you see it ends with, "Yup, it's
 8 evidence" -- Let me read it.
 9 "Yup, it's evidence in the accidental
 10 death"; right?
 11 A. Yeah, I can see that.
 12 Q. Okay. And he does not include the "ugh,
 13 this sucks" when he sends it to you; right? You
 14 don't see any "ugh, this sucks" on this, do you?
 15 A. No.
 16 Q. And it talks about how it's clearly -- it
 17 looks like it's been reloaded and that's him telling
 18 you that; right?
 19 A. The -- Sorry. Let me just read it
 20 really quick.
 21 Q. Sure.
 22 A. Okay.
 23 Q. And you ask a very interesting question,
 24 Corporal, that sounds a lot like the question the
 25 Court just asked you.

1 here, he went over to the Sheriff's office; right?
 2 A. Yes, ma'am.
 3 Q. And when you say today that he did not --
 4 he said these weren't from Rust, that's from you
 5 reviewing the lapel camera; correct?
 6 A. That they were not from the set.
 7 Q. The set?
 8 A. Yes.
 9 Q. And that's from reviewing the lapel
 10 camera; correct?
 11 A. Yes, ma'am.
 12 Q. Okay. And you just reviewed that today.
 13 You didn't review it before?
 14 A. That's correct.
 15 Q. All right.
 16 So when you find out, I assume, from
 17 Poppell that he was over there and he dropped off the
 18 ammo; right?
 19 A. Yeah. I'm not exactly sure who told me,
 20 but...
 21 Q. Okay. You -- he -- you can't confirm or
 22 deny that -- well, you didn't know that he said it
 23 wasn't from the Rust set. In fact, the report says
 24 that he says it was from the Rust set; correct?
 25 A. Right, which I had just reviewed today as

1 well.
 2 Q. Right. Right.
 3 A. Yes.
 4 Q. But when Poppell told -- when you were
 5 advised that Troy was there, or was there, your
 6 understanding was that he was claiming it was from
 7 the Rust set?
 8 A. I'm not -- I wouldn't say it was from the
 9 set, but it could be in relation to Rust.
 10 Q. Okay. So he -- so he let Poppell -- he
 11 told Poppell it was related to Rust?
 12 A. Yes.
 13 Q. Okay. And you didn't go over to the
 14 Sheriff's office and look at the ammo?
 15 A. No. I was here.
 16 Q. Well, I understand you were here.
 17 But -- but you didn't -- you know, you
 18 said, "Well, Hannah Gutierrez's trial was over,"
 19 which I took to mean that it wasn't pressing.
 20 But this case was ongoing at that time?
 21 A. Yes.
 22 Q. So did you and Poppell have a
 23 conversation about what to do with this ammo?
 24 A. Um, to my understanding, it was that it
 25 was going to be put in evidence.

1 Q. Which evidence?
 2 A. At the Sheriff's office.
 3 Q. The Rust evidence?
 4 A. No.
 5 Q. Why not?
 6 A. Just as far -- in our evidence section in
 7 the Sheriff's office.
 8 Q. And why was that determination made?
 9 A. As to why it was --
 10 Q. Who made it? Let me ask you who made it?
 11 A. These were discussions that were had with
 12 myself, with the supervisors at that time, and then
 13 with the prosecutors.
 14 Q. Were you the lead investigator?
 15 A. Yes.
 16 Q. Okay.
 17 And you said "and with the prosecutors"?
 18 A. Yes, ma'am.
 19 Q. Okay. So you -- you all had discussions
 20 about what to do with what he dropped off?
 21 A. Yes.
 22 Q. And you all agreed to put it in this
 23 separate file?
 24 A. Yes.
 25 Q. Thank you.

1 MR. SPIRO: Just very brief follow-up on
 2 the Court's questions?
 3
 4 RE-CROSS-EXAMINATION
 5 BY MR. SPIRO:
 6 Q. The defense requested both through you
 7 and the prosecutors to see all of the ammunition in
 8 this case; right?
 9 A. Yes.
 10 Q. Okay. And, obviously, and I know it's
 11 obvious, but I want to make sure it's in the record.
 12 We were not ever shown that; correct?
 13 A. Well, I believe that you guys had a
 14 secondary evidentiary meeting with the Sheriff's
 15 office that was cancelled the day before the meeting
 16 was supposed to happen.
 17 Q. Well --
 18 A. Or an evidence showing, I'm sorry.
 19 Q. Okay. Yeah, we made -- we were able to
 20 come for some showings but not others. But the
 21 reality is when we came for showings, you never
 22 showed us this evidence; correct?
 23 A. I don't know if I can agree with you
 24 there because even on the first day that I was
 25 present at that evidence hearing, we didn't get

1 through all the evidence that they wanted to see that
 2 day.
 3 MR. SPIRO: I don't have any more
 4 questions for this witness.
 5 JUDGE MARLOWE SOMMER: Let me ask you
 6 something.
 7
 8 FURTHER EXAMINATION
 9 BY JUDGE MARLOWE SOMMER:
 10 Q. If Ms. Poppell said it was not in the
 11 evidence viewing, would you disagree with her?
 12 A. If this ammunition -- sorry. I just want
 13 to make sure I'm understanding.
 14 Q. If what Troy Teske dropped off was not in
 15 the evidence viewing because -- I can get the
 16 testimony but they had a narrow -- if Ms. Poppell
 17 said it was not part of the evidence viewing that
 18 they did not -- that you did not gather it for the
 19 evidence viewing, would you disagree with her?
 20 A. I believe that we were sent a list of
 21 what they wanted to see and then -- and then on the
 22 first day that we had done an evidence showing, we
 23 didn't get through everything.
 24 Q. That's not what I asked you.
 25 A. And then -- yeah, I understand, but I'm

1 MS. MORRISSEY: I want to -- I just need
 2 to develop my record so I need to get the video in.
 3 I need to get the video in.
 4 JUDGE MARLOWE SOMMER: You can get the
 5 video in. Okay? Are you going to get it through
 6 her? Because I said it should come in from the
 7 person that wore the body camera.
 8 MS. MORRISSEY: I agree with you. He's
 9 here.
 10 JUDGE MARLOWE SOMMER: Okay. Well, fine.
 11 So, do you have any cross-examination for
 12 her?
 13 MS. MORRISSEY: I do.
 14
 15 CROSS-EXAMINATION
 16 BY MS. MORRISSEY:
 17 Q. Corporal, as you sit here today, do you
 18 have any reason to believe that the ammunition that
 19 was provided by Mr. Teske came from the set of Rust?
 20 A. No.
 21 JUDGE MARLOWE SOMMER: May I ask a
 22 question?
 23 MS. MORRISSEY: Sure.
 24
 25

1 trying to -- Then we had another day.
 2 Q. Pardon me?
 3 A. We had a second day that was set up to
 4 continue --
 5 Q. I asked you if you would disagree that
 6 Ms. Poppell said that it was not to be -- that it was
 7 not included in the evidence viewing, not whether you
 8 got to it or whatever, but whether when they said we
 9 want evidence viewing, you -- Ms. Poppell said it was
 10 not part of the evidence viewing?
 11 A. I don't know if it was or wasn't.
 12 Q. Would you disagree with her is what I'm
 13 asking?
 14 A. I -- I really don't know how to answer
 15 that.
 16 JUDGE MARLOWE SOMMER: All right. Thank
 17 you.
 18 Redirect?
 19 MS. MORRISSEY: I can't provide the video
 20 until she logs into this system.
 21 Mr. Spiro --
 22 JUDGE MARLOWE SOMMER: You know, I don't
 23 even think the video is relevant. She did not view
 24 it until today. So you can look at it, but I'm --
 25 Do you have any cross-exam for her?

1 FURTHER EXAMINATION
 2 BY JUDGE MARLOWE SOMMER:
 3 Q. When you say that there were discussions
 4 and the decision was made by all of you to put that
 5 ammo in a separate file, right? Is that correct, you
 6 said that?
 7 A. Yes, ma'am.
 8 Q. Was Ms. Morrissey part of that
 9 discussion?
 10 A. Yes.
 11 JUDGE MARLOWE SOMMER: Thank you.
 12 MS. MORRISSEY: Let -- let me give the
 13 Court an offer of proof, and if Mr. Spiro wants me
 14 to, I'll testify under oath.
 15 JUDGE MARLOWE SOMMER: You are going to
 16 testify under oath.
 17 MS. MORRISSEY: Sure. Absolutely. I'm
 18 happy to.
 19
 20 RECROSS-EXAMINATION
 21 BY MS. MORRISSEY:
 22 Q. I'm showing you State's Exhibit 16. How
 23 do you know that's related to the set of Rust?
 24 A. Because it was collected during a search.
 25 Q. Did it come from the scene?

1 from Hannah Gutierrez's cellphone extraction and they
2 show spot-on match for the live rounds found on the
3 set of Rust. This is clearly the reason that
4 Mr. Bowles said, "You and your ammunition better get
5 out of here" because it would not have hurt the case,
6 the State's case against Hannah Gutierrez, it would
7 have been the best evidence I could have hoped for.

8 These are -- these look exactly like the
9 ammunition, the actual ammunition that we have in
10 evidence, and they do look like the three rounds that
11 are in that envelope.

12 So when Mr. Teske couldn't get Mr. Bowles
13 to take them because they were the best evidence
14 against his client, he took them over to the
15 Sheriff's department, and when he dropped them at the
16 Sheriff's department, I was told that there was going
17 to be a report, there was a report. I assumed they
18 looked like these, and Detective Hancock indicated to
19 me that because he dropped them off and he didn't
20 wait for her, she was then going to try to follow-up
21 with him, take a statement from him so that we could
22 get some idea where they came from, what the
23 relevance was, if there was any relevance at all, and
24 he never returned her phone calls.

25 And that's all of the information that I

1 national labor union, and he was not expecting the
2 trial to be set so quickly. He wasn't expecting it
3 to be set in July.

4 So when he realized the trial was going
5 to be set in July, he was going to be in collective
6 bargaining agreements for his national labor union
7 and he wasn't going to be able to have enough time.

8 ~~Q. Erlinda Johnson, the next prosecutor~~
9 ~~selected, resigned from the case today?~~

10 ~~A. She did.~~

11 ~~Q. Based in part on the conduct we're here~~
12 ~~discussing, correct?~~

13 ~~A. I believe that Ms. Johnson has --~~
14 ~~Ms. Johnson didn't want there -- my understanding is~~
15 ~~that she didn't agree with the decision to have a~~
16 ~~public hearing.~~

17 Q. On July 1st in this matter, you served a
18 certificate of compliance with 5-501; correct?

19 A. I did.

20 Q. And you've never turned over the report
21 or any of the evidence that we're talking about here
22 at this hearing; correct?

23 A. Let's take it one at a time.

24 I did not turn over the report. I didn't
25 have a copy of the report.

1 can give the Court, but I'm happy to answer any
2 questions.

3 MR. SPIRO: May I ask a few questions,
4 Your Honor?

5 JUDGE MARLOWE SOMMER: Yeah,
6 cross-examine.

7
8 CROSS-EXAMINATION

9 BY MR. SPIRO:

10 Q. When you took over this case, the
11 investigator handling the case, Mr. Shilling, left
12 the case; correct?

13 A. At my request, yes.

14 Q. The paralegal that was handling this case
15 with you left the case, Mr. Tad?

16 A. At my request, yes.

17 Q. Well, the first prosecutor that was
18 working with you on this case you selected; correct?

19 A. I did.

20 Q. And he resigned too?

21 A. I wouldn't say that he resigned, no.

22 Q. Okay. He didn't stay on the case for the
23 Alec Baldwin trial; correct?

24 A. No, and he indicated that that was
25 because he represented a labor union, that's a

1 The rounds that were left at the
2 Sheriff's department by Troy Teske, I have absolutely
3 no reason to believe that they are relevant to the
4 incident that took place on the set of Rust. These
5 are rounds that were in the possession of Thell Reed
6 and never left the state of Arizona.

7 Q. You also did not allow the defense to
8 view that evidence at any point during our request to
9 review evidence in this case?

10 A. I had never seen it, and I didn't realize
11 that it wasn't under the same case number because I'm
12 not a law enforcement officer, and I don't work at
13 the Sheriff's department, but you are right.

14 Q. And you can see that they are Starline
15 Brass silver .45; right?

16 A. I can. And this is the best evidence
17 against Hannah Gutierrez.

18 Q. Yeah, you've said that a couple of times.

19 Any favorable evidence you understand as
20 a prosecutor has to be turned over to the defense;
21 correct?

22 A. I do.

23 Q. Any evidence that could be used as a
24 defense to potentially be favorable has to be turned
25 over to the defense?

EXHIBIT C

Subject: RE: Evidence Inspection Request
Date: Wednesday, April 10, 2024 at 10:47:18 AM Eastern Daylight Time
From: Sara Clark
To: Marissa D Poppell, Kari Morrissey, jjl@jjllaw.com, connor@nminvestigation.com
CC: Alex Spiro, Luke Nikas, Michael Nosanchuk, Heather LeBlanc, Alexandria J. Hancock
Attachments: image001.png

Good morning all,

Confirming that the evidence we know we will want pulled includes the below (some of which I understand to be in the possession of the Haags).

1. All guns from the scene, prop truck, or PDQ
2. All ammunition, including any located at the scene, prop truck, or PDQ, or used for comparison (blanks, dummies, live, denex), to include associated boxes or bags in which any of the ammunition was located
3. Prop cart itself
4. All bandoliers, holsters, or gun belts
5. Hannah's fanny pack
6. All guns used by the Haags for comparison, parts, or demonstration purposes

Attendees will be Brian Leuttke, Craig Martin, and Heather LeBlanc. Please let me know if I can clarify any of the above.

Regards,
Sara

Sara Clark
Associate,
Quinn Emanuel Urquhart & Sullivan, LLP

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From: Marissa D Poppell <mpoppell@santafecountynm.gov>
Sent: Monday, April 8, 2024 11:22 AM
To: Kari Morrissey <ktm@morrisseylewis.com>; Sara Clark <saraclark@quinnemanuel.com>; jjl@jjllaw.com; connor@nminvestigation.com
Cc: Alex Spiro <alexspiro@quinnemanuel.com>; Luke Nikas <lukenikas@quinnemanuel.com>; Michael Nosanchuk <michaelnosanchuk@quinnemanuel.com>; Heather LeBlanc <heather@leblanclawnm.com>; Alexandria J. Hancock <ajhancock@santafecountynm.gov>
Subject: RE: Evidence Inspection Request

[EXTERNAL EMAIL from mpoppell@santafecountynm.gov]

Good afternoon,

Unfortunately, I will not be at this meeting on April 16th. There has been a death in my family and I will be flying out of state. I understand that this is a large undertaking to organize so many people being present at the evidence viewing. Therefore, my coworker Chika Uloma will be pulling all the evidence and Corporal Talamante and Sergeant Alderete will be assisting her. If you have questions beforehand please let me know.

Sara,

If you could please get me a detailed list on what is needed it would be appreciated. There are a multitude of items and I'd like to have them pulled and in order before I leave on Friday. Thank you.

Respectfully,

Marissa Poppell
Crime Scene Technician
Santa Fe County Sheriff
505-986-2483



From: Kari Morrissey [<mailto:ktm@morrisseylewis.com>]
Sent: Monday, April 1, 2024 10:46 AM
To: Marissa D Poppell <mpoppell@santafecountynm.gov>; Sara Clark <saraclark@quinnemanuel.com>; jll@jlllaw.com; connor@nminvestigation.com
Cc: Alex Spiro <alexspiro@quinnemanuel.com>; Luke Nikas <lukenikas@quinnemanuel.com>; Michael Nosanchuk <michaelnosanchuk@quinnemanuel.com>; Heather LeBlanc <heather@leblanclawnm.com>; Alexandria J. Hancock <ajhancock@santafecountynm.gov>
Subject: RE: Evidence Inspection Request

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Ok. Great. Thank you.

On 04/01/2024 10:41 AM MDT Marissa D Poppell <mpoppell@santafecountynm.gov> wrote:

Kari,
All of those items were picked up by myself and returned to the Sheriff's office.

Sara,

If you have a detailed list of what items you would like to see please let me know ahead of time as it is a time consuming process to pull everything.

Thank you,
-Marissa Poppell

From: Kari Morrissey [mailto:ktm@morrisseylewis.com]
Sent: Monday, April 1, 2024 10:33 AM
To: Sara Clark <saraclark@quinnemanuel.com>; Marissa D Poppell <mpoppell@santafecountynm.gov>; jll@jlllaw.com; connor@nminvestigation.com
Cc: Alex Spiro <alexspiro@quinnemanuel.com>; Luke Nikas <lukenikas@quinnemanuel.com>; Michael Nosanchuk <michaelnosanchuk@quinnemanuel.com>; Heather LeBlanc <heather@leblancclawnm.com>; Alexandria J. Hancock <ajhancock@santafecountynm.gov>
Subject: RE: Evidence Inspection Request

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--

Counsel

Just a reminder that some of the items that were in evidence at the SFSO were admitted as exhibits in the Gutierrez trial. That included a disassembled live round from PDQ, a disassembled live round from the set of Rust, a few dummy rounds and the shoulder holster Mr. Baldwin was wearing on the set of Rust.

Kari

On 03/25/2024 5:06 PM MDT Sara Clark <saraclark@quinnemanuel.com> wrote:

If we can start at 8:30am that would be ideal. Let me know if that works.

Best,
Sara

Sara Clark
Associate,
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From: Kari Morrissey <kim@morrisseylewis.com>
Sent: Monday, March 25, 2024 3:16 PM
To: Sara Clark <saraclark@quinnemanuel.com>; Marissa D Poppell <mpoppell@santafecountynm.gov>; jjl@jilllaw.com; connor@nminvestigation.com
Cc: Alex Spiro <alexspiro@quinnemanuel.com>; Luke Nikas <lukenikas@quinnemanuel.com>; Michael Nosanchuk <michaelnosanchuk@quinnemanuel.com>; Heather LeBlanc <heather@leblanclawnm.com>; Alexandria J. Hancock <ajhancock@santafecountynm.gov>
Subject: RE: Evidence Inspection Request

[EXTERNAL EMAIL from ktm@morrisseylewis.com]

Sara

Thank you. Let us know what time you want to begin.

Kari

On 03/25/2024 2:03 PM MDT Sara Clark <saraclark@quinnemanuel.com> wrote:

Kari,

Please schedule for April 16.

Attendees will be Craig Martin, Brian Leuttke, and Heather LeBlanc. I will let you know if that changes or expands before that date.

Regards,
Sara

Sara Clark
Associate,
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From: Sara Clark
Sent: Monday, March 25, 2024 11:45 AM

Sent: Monday, March 25, 2024 11:15 AM

To: Kari Morrissey <ktm@morrisseylewis.com>; Marissa D Poppell <mpoppell@santafecountynm.gov>; jjl@jjllaw.com; connor@nminvestigation.com
Cc: Alex Spiro <alexspiro@quinnemanuel.com>; Luke Nikas <lukenikas@quinnemanuel.com>; Michael Nosanchuk <michaelnosanchuk@quinnemanuel.com>; Heather LeBlanc <heather@leblanclawnm.com>; Alexandria J. Hancock <ajhancock@santafecountynm.gov>
Subject: RE: Evidence Inspection Request

Thank you Kari, will confirm which date and attendees and revert.

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From: Kari Morrissey <ktm@morrisseylewis.com>
Sent: Monday, March 25, 2024 11:23 AM
To: Sara Clark <saraclark@quinnemanuel.com>; Marissa D Poppell <mpoppell@santafecountynm.gov>; jjl@jjllaw.com; connor@nminvestigation.com
Cc: Alex Spiro <alexspiro@quinnemanuel.com>; Luke Nikas <lukenikas@quinnemanuel.com>; Michael Nosanchuk <michaelnosanchuk@quinnemanuel.com>; Heather LeBlanc <heather@leblanclawnm.com>; Alexandria J. Hancock <ajhancock@santafecountynm.gov>
Subject: RE: Evidence Inspection Request

[EXTERNAL EMAIL from ktm@morrisseylewis.com]

Sara

Please let us know who from your team will be attending the evidence viewing. Thank you.

Kari

On 03/22/2024 9:03 AM MDT Sara Clark <saraclark@quinnemanuel.com> wrote:

Kari, can you please check those dates with Mr. Haag?

Sara Clark
Associate,
Quinn Emanuel Urquhart & Sullivan, LLP

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Houston, TX 77002
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From: Marissa D Poppell
<mpoppell@santafecountynm.gov>
Sent: Friday, March 22, 2024 10:01 AM
To: Kari Morrissey <ktm@morrisseylewis.com>;
Sara Clark <saraclark@quinnemanuel.com>;
jlewis@da.state.nm.us; jjl@jilllaw.com
Cc: Alex Spiro <alexspiro@quinnemanuel.com>;
Luke Nikas <lukenikas@quinnemanuel.com>;
Michael Nosanchuk
<michaelnosanchuk@quinnemanuel.com>; Heather
LeBlanc <heather@leblanclawnm.com>; Alexandria
J. Hancock <ajhancock@santafecountynm.gov>
Subject: RE: Evidence Inspection Request

[EXTERNAL EMAIL from mpoppell@santafecountynm.gov]

Good morning,
I am available for April 8, 16, or 18 from 8am-4pm. I will be out of the office on April 29th. Please let me know when a final decision date is reached.

Respectfully,

Marissa Poppell
Crime Scene Technician
Santa Fe County Sheriff
505-986-2483





From: Kari Morrissey
[mailto:ktn@morrisseylewis.com]
Sent: Thursday, March 21, 2024 3:17 PM
To: Sara Clark <saraclark@quinnemanuel.com>;
jlewis@da.state.nm.us; jjl@jillaw.com
Cc: Alex Spiro <alexspiro@quinnemanuel.com>;
Luke Nikas <lukenikas@quinnemanuel.com>;
Michael Nosanchuk
<michaelnosanchuk@quinnemanuel.com>; Heather
LeBlanc <heather@leblancclawnm.com>; Marissa D
Poppell <m.poppell@santafecountynm.gov>;
Alexandria J. Hancock
<ajhancock@santafecountynm.gov>
Subject: Re: Evidence Inspection Request

Warning:

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Sara

The evidence viewing must be set up through Ms. Poppell who is the evidence technician for the SFSO. I have cc'd her and Corporal Hancock on this email. The firearm that was used to source the parts for the testing by the Haag's is owned by Mike Haag. I will reach out to him and see if he can meet you at the evidence room to show you the parts he used to repair the evidence revolver. You can remove any parts of the evidence revolver for inspection and photographing but cannot remove them from the evidence room without a court order. Please let me know who from your team will be attending the evidence viewing. Thanks,

Kari

On 03/21/2024 1:37 PM MDT Sara Clark <saraclark@quinnemanuel.com> wrote:

Kari,

We would like to request to view the evidence revolver, the ballistics evidence

evidence revolver, the ballistic evidence (all rounds, casings, deconstructed rounds, etc.) as well as any firearms that were used to source parts and/or for comparison purposes by the State's experts. In connection with this review, we would request that our team be permitted to remove any parts they deem necessary for inspection and photographing. Accordingly, we would request the evidence be available for the entirety of the day to allow our team to inspect as they see fit. Our team is available on the following dates in April: April 8, 16, 18, and 29. Please provide alternate dates if these do not work.

Regards,
Sara

Sara Clark
Associate,
Quinn Emanuel Urquhart & Sullivan, LLP

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EXHIBIT D

1 However, to the extent the defense may
2 elicit evidence about the Santa Fe County's
3 investigation, the FBI testing, the Haag's three
4 reports and his meeting with Ziegler, this evidence
5 is relevant as it goes -- as it makes a fact more or
6 less probable, and the fact is of consequence in the
7 action and weighing it, the probative value of the
8 evidence is substantially outweighed by danger of
9 unfair prejudice, et cetera.

10 All right. Thank you.
11 Now we're going to -- Oh, let me just
12 back up and do these two that...

13 Is that it?
14 State's motion in limine No. 4. Let me
15 just make sure I haven't missed one.

16 Okay. State's motion in limine No. 4,
17 which is no reference to the potential punishment in
18 the case.

19 MR. SPIRO: There's no issue, Your Honor.

20 JUDGE MARLOWE SOMMER: All right. So
21 that's agreed, stipulated.

22 State's motion in limine No. 5 to
23 prohibit the defense from arguing to the jury
24 examples of the definition of reasonable doubt.

25 MR. SPIRO: No present intention to do

1 can only be given by an expert, not by a lay witness.

2 The State cites the State versus Vargas
3 case, Your Honor. They say it's a two-part test.

4 Part No. 1 is can the lay witness testify
5 about it based on personal observation?

6 Part No. 2, can the lay witness
7 rationally connect their personal observation to the
8 opinion testimony? They say they can. Because the
9 medic has been on movie sets. It's personal
10 observation.

11 What the State overlooks is that before
12 Vargas states that two-part test, it actually
13 addresses a third one. That's the third prong of
14 Rule 701, which says a lay witness cannot give
15 testimony if it's within scientific, technical, or
16 specialized knowledge. That's what Vargas says.
17 Testifying about movie standards, safety standards,
18 armorer standards, how dummies are made, the things
19 that the camera grip and the medic they want them to
20 testify about are within the specialized knowledge of
21 someone on a movie set. As Vargas put it, it has to
22 be only within the common experience and knowledge of
23 a layperson.

24 Now, how do we know that that testimony
25 is not within the common experience and knowledge of

1 so. I don't -- we'll discuss reasonable doubt, but
2 those random hypotheticals I don't think the Court
3 should preclude the defense from arguing anything
4 that they choose to when you decide the law, as long
5 as it's relevant. But we have no present intention
6 of --

7 JUDGE MARLOWE SOMMER: You're not going
8 to give them an example of reasonable doubt?

9 Okay.

10 MR. SPIRO: I have no present intention
11 to.

12 JUDGE MARLOWE SOMMER: Okay. And that
13 doesn't come up in voir dire either. Okay.

14 All right. Where are we?

15 We've got defendant's motion in limine
16 No. 4 to preclude improper expert testimony from lay
17 witnesses.

18 MR. NIKAS: Thank you, Your Honor.

19 The State wants to admit evidence from
20 the camera grip, for example, about how dummies are
21 made, safety standards for armorers on set, safety
22 standards for producers, et cetera, the camera grip.
23 It wants to have the medic testify about the
24 standards for armorers on set.

25 This is improper opinion testimony that

1 a layperson? Because the State says so in its other
2 motions, and I brought my notes up here so I can get
3 the language exactly right.

4 In one of its limine motions, with
5 respect to cumulative expert testimony, that's motion
6 in limine No. 8, here's what the State says: "Many
7 people, like many jurors, are not at all familiar
8 with safety protocols on movie sets. And many of the
9 State's experts are being called to educate the jury
10 with regard to safe practices in movie sets."

11 On the Jorgensen motion that we just went
12 over, Your Honor, let me read from that one, too.
13 "Safety bulletins and protocols on the use and
14 handling of firearms on a movie set, as well as movie
15 production requirements to ensure a safe working
16 environment, are not within the average layperson's
17 knowledge."

18 They try to admit Mr. Carpenter's
19 testimony on that, too. They say this is specialized
20 knowledge, expert testimony. They try to get experts
21 in on it, but then they try to say it's just lay
22 opinion testimony that the medic can offer, the
23 camera grip can offer.

24 They cannot have it both ways,
25 Your Honor. And, in fact, Vargas reversed a

EXHIBIT E

the parties involved would have been better served by the Court's acceptance of an otherwise agreed-upon plea.

CERTIFICATIONS

Similarly, the Court now proposes the use of several unnecessary and burdensome certifications and documentations from the State. Among these is a so-called "speed letter," an item which, despite the language used in the CMO, has never been utilized in the First Judicial District. Other required filings include a new "[c]ertification of readiness before pretrial conference or docket call," a "[c]ertification by prosecution [stating] that before obtaining an indictment or filing an information the case has been investigated sufficiently," and a "certification [stating that the State] has exercised due diligence to ensure that all evidence that may require testing has been submitted to the state crime lab." *Id.* at (A)(2); (I); (C)(6).

These new requirements are redundant for several reasons. First, the State is already required to exercise its due diligence under the Rules of Professional Conduct. "The prosecutor in a criminal case shall [] refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause." Rule 16-308(A) NMR RPC. A prosecutor is also required to "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor." *Id.* at (D).

Second, the State is already required to certify disclosure of discovery under the New Mexico Supreme Court order for preliminary hearings—thereby rendering the requirement of a certificate that "the case been investigated sufficiently" superfluous by the time it reaches District

Court Rule 5-302 NMRA. This requirement should be subsumed by preliminary requirements at the Magistrate Court.

Finally, each of these new certificates requires certifying the existence and stewardship of discovery. Should, for some reason, the State not have already abided by the Rules of Professional Conduct, then there is already an additional baked-in motivation for the State to exercise diligence without such stewardship and appropriate collection of evidence, the State would be risking its case at trial or beforehand. Is this aim not already better served by Supreme Court precedent that is frequently relied upon by our District Court judges? *See State v. Le Mier*, 2017-NMSC-017, 394 P.3d 959, *State v. Harper*, 2011-NMSC-044, 150 N.M. 745, 266 P.3d 25.

If it is true that the FJDA is already kept in line by the Rules of Professional Conduct, the Magistrate Court certification requirement, the Rules of Evidence, and Supreme Court precedent, why then would time-consuming and resource-draining technicalities such as four additional filings make a sufficient enough difference to outweigh the obvious strain they would put on the FJDA and the Court itself?

Finally, this is an unreasonable burden on an already overburdened and understaffed Court Clerk's office. Tripling the number of filings for the Court, which is already behind in processing filings, will only increase opportunities for sanctions. It appears from the CMO that the prosecution would run the risk of sanctions when a process outside of its control is not aligned with the strict timelines and mandates.

PRETRIAL INTERVIEWS

The State will be required under this CMO to file a certification of the summary or nature of a Witness's testimony: