STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,
Plaintiff,

v. No. D-101-CR-2023-00040

HANNAH GUTIERREZ,
Defendant.

ORDER DENYING DEFENDANT HANNAH GUTIERREZ-REED'S *EXPEDITED* MOTION FOR NEW TRIAL OR FOR DISMISSAL FOR DISCOVERY VIOLATIONS AND UNDER THE COURT'S INHERENT POWER

THIS MATTER came before the Court on Defendant Hannah Gutierrez-Reed's Expedited Motion for New Trial or for Dismissal for Discovery Violations and Under the Court's Inherent Power ("Expedited Motion"), filed July 16, 2024. Having reviewed the briefing, considered oral argument, and being otherwise fully advised, THE COURT FINDS, CONCLUDES, AND ORDERS:

PROCEDURAL SUMMARY

1. On January 31, 2023, the State filed a Criminal Information against Defendant Hannah Gutierrez. In addition to other preceding amended charging documents, the State filed a Third Amended Criminal Information on June 22, 2023. The Third Amended Criminal Information became the operative charging document.
2. Through this operative criminal information, the State charged Defendant with the following counts:

Count 1 – Involuntary Manslaughter contrary to NMSA 1978, Section 30-2-3(B) (1994). *See* § 30-2-3(B) ("Involuntary manslaughter consists of manslaughter committed in the commission of an unlawful act not amounting to a felony[.]").

Alternative Count 1 – Involuntary Manslaughter contrary to NMSA 1978, Section 30-2-3(B) (1994). *See* § 30-2-3(B) ("Involuntary manslaughter consists of manslaughter committed . . . in the commission of a lawful act which might produce death in an unlawful manner or without due caution and circumspection.").

Count 2 – Tampering with Evidence contrary to NMSA 1978, Section 30-22-5 (2003).

3. Following months of robust motion practice, on February 21, 2024, the Court empaneled a *petit* jury. Thereafter, the Court presided over a jury trial between February 22, 2024, and March 6, 2024.
4. On March 6, 2024, the jury returned two general verdicts. As to Count 1 – Involuntary Manslaughter, the jury found the Defendant guilty. As to Count 2 – Tampering with Evidence, the jury found the Defendant not guilty. *See* Verdict Forms, filed Mar. 8, 2024.
5. On July 16, 2024, Defendant filed her Expedited Motion. In response, on July 31, 2024, the State filed its Response to Defendant's Motion for New Trial ("Response"). Thereafter, Defendant filed her Reply to her *Expedited* Motion for New Trial or for Dismissal for Discovery Violations and Under the Court's Inherent Power ("Reply") on August 27, 2024.
6. On September 26, 2024, this Court entertained oral argument on Defendant's Expedited Motion. After considering argument, the Court reserved ruling on Defendant's Expedited Motion. The Court now enters its written ruling on Defendant's Expedited Motion.

RULING AND ANALYSIS

7. Overview of Pertinent Authority. Defendant's Expedited Motion implicates three separate analyses developed in case law. *Cf. State v.* Ware, 1994-NMSC-091, ¶ 11, 118 N.M. 319 ("Case law from New Mexico and other jurisdictions demonstrates that a clear distinction exists between suppression of evidence, failure to preserve evidence, and failure to gather evidence in the first instance during a criminal investigation."). Specifically, the Court must analyze certain claims under a *Brady* analysis, and under the standard applicable to motions for new trial based on newly discovered evidence. *See generally State v. Miera*, 2018-NMCA-020, ¶ 25, 413 P.3d 491 ("The district court analyzes a *Brady* claim differently from a motion for new trial based on newly discovered evidence."). In addition, another claim by Defendant may implicate the two-part test developed in *State v. Ware*, 1994-NMSC-091, 118 N.M. 319, concerning evidence uncollected by police.

8. "In New Mexico, an assertion of a *Brady* violation is an allegation of prosecutorial misconduct." *State v. Romero*, 2013-NMCA-101, ¶ 14, 311 P.3d 1205. "In order to establish a *Brady* violation, the defendant 'must show that: (1) the prosecution suppressed evidence; (2) the evidence was favorable to the accused; and (3) the evidence was material to the defense.'" *Id.* (citation omitted). The defendant carries the burden of establishing a *Brady* violation. *Id.* Appellate courts review a trial court's ruling on prosecutorial misconduct for abuse of discretion. *Id.*

9. "[T]he first element requires proof that the prosecution suppressed or withheld the evidence in question[;] it 'does not require a finding of bad faith or any other culpable state of mind on the part of the prosecutor.'" *Case v. Hatch*, 2008-NMSC-024, ¶ 45, 144 N.M. 20

(citation omitted). "The second *Brady* element is whether the suppressed evidence was favorable to the accused, either as impeachment or exculpatory evidence." *Id.* ¶ 50.

10. With respect to the third *Brady* element, "'evidence is material [under *Brady*] only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Id.* ¶ 53 (citation omitted); *see also id.* ¶ 53 ("Evaluating materiality under *Brady* requires us to look at the entire trial to determine whether the defendant's conviction was obtained by violating due process, whether his or her trial was tainted with fundamental unfairness because certain evidence was not disclosed to the defense." (citations and internal quotation marks omitted)).

11. Under New Mexico's application of *Brady*, "while post-trial discovery of evidence under *Brady* requires 'a reasonable probability that . . . the result of the proceeding would have been different[,]' discovery of evidence during trial requires an evaluation of whether the late tender has impeded the effective use of evidence in such a way that impacts the fundamental fairness of the proceedings." *State v. Huerta-Castro*, 2017-NMCA-026, ¶ 36, 390 P.3d 185 (citation omitted).

12. A motion for a new trial[1] filed under Rule 5-614 NMRA on the basis of newly discovered evidence must satisfy six requirements: "(1) [the evidence] will probably change the result if a new trial is granted; 2) it must have been discovered since the trial; 3) it could not have

[1] Defendant's Expedited Motion primarily relies upon *State v. Allison*, 2000-NMSC-027, ¶ 6, 129 N.M. 566, as the New Mexico law basis for her request for a new trial. *See, e.g.*, Expedited Mot. 19-20. However, *Allison* sets forth a four-part test applicable to instances where "evidence is disclosed for the first time during trial[.]" *Allison*, 2000-NMSC-027, ¶ 6 (quoting *State v. Mora*, 1997-NMSC-060, ¶ 43, 124 N.M. 346, *abrogated on other grounds by State v. Frazier*, 2007-NMSC-032, ¶ 31, 142 N.M. 120). Because the evidence at issue was not disclosed during trial, the Court concludes that *Allison* is inapplicable to the case at hand. Further, even if *Allison* were applicable, because *Allison* considers whether undisclosed evidence is material, which the Court concludes below that Defendant has not established, the Court would deny Defendant's requested relief under *Allison's* four-part test.

been discovered before the trial by the exercise of due diligence; 4) it must be material; 5) it must not be merely cumulative; and 6) it must not be merely impeaching or contradictory." *State v. Volpato*, 1985-NMSC-017, ¶ 7, 102 N.M. 383; *State v. Garcia*, 2005-NMSC-038, ¶ 17, 138 N.M. 659 (referring to these requirements as the "six *Volpato* requirements"). "Motions for a new trial 'are not favored[.]'" *State v. Cebada*, 2024-NMCA-023, ¶ 16, 544 P.3d 269 (quoting *State v. Stephens*, 1982-NMSC-128, ¶ 7, 99 N.M. 32). The defendant bears the burden of establishing each of the requirements set forth above for the grant of a motion for new trial. *See Case v. Hatch*, 2008-NMSC-024, ¶ 5, 144 N.M. 20 ("The grant of a new trial is not automatic; rather, the defendant must prove that the newly-discovered evidence meets each of the following requirements: . . .").

13. In *State v. Ware*, 1994-NMSC-091, ¶ 25, 118 N.M. 319, the New Mexico Supreme Court "adopt[ed] a two-part test for deciding whether to sanction the State when police fail to gather evidence from the crime scene. First, as a threshold matter the evidence that the State failed to gather from the crime scene must be material to the defendant's defense." Second, "[i]f the evidence is material to the defendant's defense, then the conduct of the investigating officers is considered." *Id.* ¶ 26.

14. Analysis. Defendant requests a new trial or dismissal on the basis of three purported discovery violations.[2] First, Defendant asserts that the State suppressed an August 31, 2023 Supplemental Report prepared by Mr. Lucien C. Haag concerning the functionality of the

[2] Defendant additionally refers to other materials comprising "another possible 900 or so pages of material related to state's witnesses Bryan Carpenter and Haag that was not disclosed to undersigned counsel." Expedited Mot. 13. However, Defendant does not explain, within the context of case law concerning *Brady* violations, Rule 5-614 NMRA, or other pertinent authority why these materials justify dismissal or a new trial. Therefore, the Court does not analyze Defendant's claims of error vis-à-vis said material. *Cf. Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339 ("We will not review unclear arguments, or guess at what his arguments might be.").

firearm involved in the incident (the "Expert's Supplemental Report"). Expedited Mot. 10-13, 16-21; Reply 5-8. Second, Defendant claims that the State failed to disclose an interview with State's witness Mr. Seth Kenney. Expedited Mot. 7-9; Reply 10-11. Third, Defendant complains that she failed to receive a supplemental report and lapel video recording concerning the collection, by the Santa Fe County Sheriff's Office, of ammunition supplied by Mr. Troy Teske that related to the *Rust* incident. Expedited Mot. 1-5; Reply 8-10.

15. *The Expert's Supplemental Report*. Applying pertinent case law and other authority, the Court concludes that the late disclosure of the Expert's Supplemental Report does not justify dismissal or a new trial. The Court applies the *Brady* analysis and reviews whether Defendant has satisfied the *Volpato* requirements.

16. With respect to the first *Brady* element, the Court finds that Defendant has established that the State suppressed the Expert's Supplemental Report. *Cf.* Resp. 25 ("The State concedes that it failed to disclose the August 31, 2023, report but disclosed the October 5, 2023, report the same day State's counsel received it from Mr. Haag."). With respect to the second *Brady* element, the Court finds that Defendant has also established that the Expert's Supplemental Report is favorable to Defendant. Specifically, the Expert's Supplemental Report may have been used to impeach Mr. Haag's confirmation that "other than the FBI testing, breaking those components, [he] didn't see any other evidence of modification or damage." 2-27-24 FTR Courtroom 237 1:00:00-1:00:10; *compare id.*, *with* Def.'s June 27, 2024 Mot., Ex. A at p. 2 ("It seems unlikely, although it cannot be excluded, that these toolmarks are the result of the damage incurred during the FBI's impact testing because

the axis of these striae is not aligned with the direction that the hammer would have engaged and applied pressure to the sear.").

17. Nonetheless, the Court finds that Defendant has failed to establish that the Expert's Supplemental Report is material under the *Brady* analysis. Defendant contends that had she possessed the Expert's Supplemental Report, she "would have had a sufficient evidentiary basis from which to argue that unexplained alterations to the firearm caused it to fire without anyone pulling the trigger—an unforeseeable intervening cause that rendered her conduct not legally responsible for Ms. Hutchins' tragic death." Expedited Mot. 12-13.

18. However, the Expert's Supplemental Report does not stand for the proposition that Defendant asserts. Rather, the Expert's Supplemental Report provides, "[w]hile the toolmarks observed on the working surface and front surface of the SFSO Item 1 trigger/sear do not appear to be original manufacturing marks or use and abuse toolmarks based on striae's irregular orientation, these toolmarks also are unlikely to have any bearing on the operation of the revolver at the time of the incident based on the FBI's trigger pull data, an FBI photograph of the hammer at full cock and substantial test-fir[ing] of the SFSO Item 1 evidence revolver conducted by the FBI prior to the damage to the trigger/sear and hammer." Def.'s June 27, 2024 Mot., Ex. A at p. 2.

19. Further, the Expert's Supplemental Report is in accordance with Mr. Haag's trial testimony, wherein he maintained the position that modifications present on the firearm likely had no bearing on the operation of the firearm at the time of the incident. *See, e.g.*, 2-27-24 FTR Courtroom 237 12:58:56-12:59:24 (Mr. Bowles: "Did you also say that you did not find any damage to that weapon that would have prevented it from firing as

designed? And I'm talking about, not after the FBI, but prior. Is that your conclusion?" Mr. Haag: "Yes, if the hammer were replaced and the trigger replaced and the bolt, it was a perfectly functioning, authentic replica of a classic firearm."); 2-27-24 FTR Courtroom 237 10:56:39-10:57:03 (Ms. Morrissey: "Based on everything that you reviewed and also the examination and the firing of this gun that you, yourself, participated in, have you seen any evidence that the full-cock hammer notch was filed or modified to allow faster shooting?" Mr. Haag: "No.").

20. Because Mr. Haag maintained the position that the modifications present on the firearm likely had no bearing on the operation of the firearm at the time of the incident, and because the Expert's Supplemental Report does not contradict this position, Defendant's argument that the Expert's Supplemental Report could have impacted the jury's calculus of proximate cause under UJI 14-251 NMRA is not persuasive. Thus, there is a lack of reasonable probability that had Defendant possessed the Expert's Supplemental Report, the result of the trial would have been different.

21. Therefore, Defendant has failed to establish that the State's late disclosure of the Expert's Supplemental Report constitutes a *Brady* violation.

22. Similarly, with respect to the *Volpato* requirements pertinent to Rule 5-614, the Court finds—under the reasoning set forth above—that Defendant has failed to establish that the Expert's Supplemental Report: (a) will probably change the result of the jury's verdict if a new trial is granted; (b) is material; and, (c) is not merely impeaching or contradictory. Therefore, assuming *arguendo* the satisfaction of other requirements, Defendant cannot establish all *Volpato* requirements necessary for the Court to grant a new trial.

23. *The Interview of Mr. Seth Kenney.* Applying pertinent case law and other authority, the Court concludes that the late disclosure of the interview of Mr. Seth Kenney does not justify dismissal or a new trial. The Court applies the *Brady* analysis and reviews whether Defendant has satisfied the *Volpato* requirements.

24. As to the first *Brady* element, the Court finds that the State suppressed the recording of the undated interview of Mr. Kenney. Notably, the State does not dispute that it failed to disclose this interview until sometime in April 2024 and after Defendant's trial. *See* Resp. 16.

25. As to the second *Brady* element, the Court assumes, but does not decide, that portions of the undisclosed interview may have been used for impeachment purposes during Defendant's trial. That is to say, the Court finds that Defendant has not sufficiently articulated how the undisclosed interview impeaches Mr. Kenney's trial testimony or exculpates Defendant from the crime charged. *Cf. Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339 ("We will not review unclear arguments, or guess at what his arguments might be."). Nonetheless, for the sake of analysis, the Court assumes that Defendant would have been able to establish some impeachment value of the undisclosed interview had she fully articulated and demonstrated that portions of the undisclosed interview contradict trial testimony.

26. As to the third *Brady* element, the Court finds that Defendant has failed to establish that the undisclosed interview is material evidence. Specifically, Defendant has not established that there is a reasonable probability that, had the evidence been available to Defendant, the evidence would have produced a different verdict.

27. When viewing the suppressed evidence's significance in relation to the record as a whole, the undisclosed interview could not be taken to put the whole case in such a different light as to undermine confidence in the verdict. *See State v. Worley*, 2020-NMSC-021, ¶ 28, 476 P.3d 1212 ("To make the materiality determination, we view the suppressed evidence's significance in relation to the record as a whole. [. . .] The suppressed evidence is considered material only if it could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." (alterations to original) (citations and internal quotation marks omitted)).

28. The Court provides two illustrative examples. First, Defendant emphasizes, "[m]ost critically, [Mr. Kenney] said he received 325 rounds from Thell Reed, . . . Mr. Kenney also represented in the Friday, July 12, 2024, hearing that he brought back 50-100 rounds with him to New Mexico and no explanation as to where they went." Expedited Mot. 9. However, information concerning Mr. Kenney's receipt of rounds from Mr. Thell Reed, and eventual transportation of those rounds to New Mexico was adduced at Defendant's jury trial on March 4, 2024 through Mr. Kenney's testimony. *See* 3-4-24 FTR Courtroom 237 10:07:24-10:11:30.

29. Second, Defendant proffers statements by Mr. Kenney concerning a need for *Rust* management to give greater support to Defendant in her roles on *Rust*. Expedited Mot. 8-9. Nonetheless, testimonial evidence concerning a lack of employer support was introduced through Mr. Lorenzo Montoya of the N.M. Occupational Health and Safety Bureau. Mr. Montoya's testimony established a government agency's conclusion that *Rust* management shared blame for the incident due to, in part, a lack adequate time afforded by

Rust management for Defendant to perform her duties. *See* 3-5-24 FTR Courtroom 237 10:54:21-10:59:15.

30. In addition, Defendant largely fails to address the State's comprehensive arguments concerning how information from the undisclosed interview was cumulative and "consistent with [disclosed] text messages" or "consistent with the testimony of other witnesses that testified at the trial and were interviewed by Mr. Bowles." Resp. 16; *compare* Resp. 16-24, *with* Reply 10-11.

31. Ultimately, the proffered statements by Mr. Kenney made within the undisclosed interview reflected information available to Defendant through other means, were already addressed by Mr. Kenney at trial, or bore on issues addressed by other witnesses during the course of Defendant's trial. Hence, Defendant has not established that this evidence undermines confidence in the verdict when considering the significance of this evidence in relation to the record as a whole.

32. Similarly, with respect to the *Volpato* requirements pertinent to Rule 5-614, the Court finds—under the reasoning set forth above—that Defendant has failed to establish that the interview of Mr. Seth Kenney: (a) will probably change the result of the jury's verdict if a new trial is granted; (b) is material; (c) is not merely cumulative; and, (d) is not merely impeaching or contradictory. Therefore, assuming *arguendo* the satisfaction of other requirements, Defendant cannot establish all *Volpato* requirements necessary for the Court to grant a new trial.

33. *The Teske-Supplied Ammunition.* Applying pertinent case law and other authority, the Court concludes that the late disclosure of materials related to ammunition supplied by Mr. Troy Teske does not warrant dismissal or a new trial. The Court applies the *Brady* analysis,

reviews whether Defendant has satisfied the *Volpato* requirements, and also considers the test outlined in *Ware*.

34. As to the first *Brady* element, the Court finds that the State did not suppress the Teske-supplied ammunition vis-à-vis Defendant Gutierrez. Rather, Mr. Troy Teske and the ammunition in his possession were available to Defendant, and yet Defendant opted not to call Mr. Teske as a witness or seek to introduce the ammunition during her trial. *See* Feb. 2, 2024 Subpoena [Return] (issued to Mr. Teske by Mr. Bowles); *see also* Expedited Mot. 5 ("Counsel for Ms. Gutierrez Reed knew that Teske had some rounds from the same batch and is not making that failure of disclosure the sole basis for this motion, except to the extent they show ongoing misconduct of the State and the failures found by the Court (although counsel for Ms. Gutierrez Reed was also never provided with a copy of the police report or lapel video concerning those collected rounds)."); 9-26-24 FTR Courtroom 379 10:08:43-10:09:23 (during the September 26, 2024 motion hearing, Mr. Bowles stated, "now, I was not able to see those rounds until the second to last day of trial, that was the first time I saw them. . . . I directed Troy Teske to turn those into the Sheriff, which he did, because we wanted law enforcement to have them.").

35. Further, the Court rejects Defendant's argument that the State constructively suppressed the Teske-supplied ammunition vis-à-vis Defendant Gutierrez when the Special Prosecutor asked, during a November 2, 2023 pretrial interview, that Mr. Teske retain the ammunition for later law enforcement collection. Rather, (a) the ammunition was available to Defendant Gutierrez's Counsel in advance of and during trial; (b) the Special Prosecutor informed Defendant Gutierrez's Counsel that she had "decided not to have them tested or picked up" via email on January 8, 2024; and, (c) the ammunition was not in the custody

of the State until March 6, 2024 when Defendant Gutierrez's Counsel apparently instructed Mr. Troy Teske to turn the ammunition into the Santa Fe County Sheriff's Office. *See* Expedited Mot. 2-4; Expedited Mot., Ex. F.

36. Further, the supplemental report and lapel video recording concerning the March 6, 2024 collection of the Teske-supplied ammunition by the Santa Fe County Sheriff's Office could not have been suppressed by the State before or during Defendant's trial because those items were not created until on or after March 6, 2024 (*i.e.*, the final day of Defendant's trial). To the extent that the State failed to disclose these items after their creation (and after Defendant's trial), the Court finds that Defendant cannot establish that the supplemental report and lapel video recording—considered alone—are material as developed in greater detail below.

37. Assuming without deciding that the second *Brady* element is satisfied (*i.e.*, that the Teske-supplied ammunition, supplemental report, and lapel video recording are favorable evidence either as impeachment evidence or exculpatory evidence), the Court finds that the third *Brady* element is not satisfied.

38. Specifically, the Teske-supplied ammunition does not qualify, as a matter of law, as material evidence because it was available to Defendant in advance of and during trial. *See Case v. Hatch*, 2008-NMSC-024, ¶ 53, 144 N.M. 20 ("'[E]vidence is material [under *Brady*] only if there is a reasonable probability that, *had the evidence been disclosed to the defense*, the result of the proceeding would have been different.'" (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985) (emphasis added)).

39. Furthermore, Defendant does not sufficiently explain how the supplemental report and lapel video recording—considered alone—carry a reasonable probability of altering the

result of Defendant's jury trial. *Cf. United States v. Bagley*, 473 U.S. 667, 682 (1985) ("A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome."). Rather, the supplemental report and lapel video recording are significant primarily because those items document Santa Fe County Sheriff Office's collection of the Teske-supplied ammunition. Critically, Defendant Gutierrez's Counsel had access to that ammunition in advance of and during trial.[3]

40. Therefore, Defendant Gutierrez has failed to establish that the State's actions in relation to the Teske-supplied ammunition and related materials constitutes a *Brady* violation.

41. Similarly, with respect to the *Volpato* requirements pertinent to Rule 5-614, the Court finds—under the reasoning set forth above—that Defendant has failed to establish that the Teske-supplied ammunition: (a) had been discovered since the trial; (b) could not have been discovered before the trial by the exercise of due diligence; and, (c) is material (as a matter of law). In addition, Defendant has failed to establish that the supplemental report and lapel video recording, considered alone: (a) will probably change the result if a new trial is granted; (b) is material; and, (c) is not merely impeaching or contradictory. Therefore, assuming *arguendo* the satisfaction of other requirements, Defendant cannot establish all *Volpato* requirements necessary for the Court to grant a new trial.

42. With respect to Defendant's arguments contending that the State erred by failing to "collect and test the Teske rounds," the Court finds and concludes that *Ware* is both inapplicable to

[3] *Cf.* Order Granting Def. Alec Baldwin's Expedited Mot. for Dismissal & Sanctions Under *Brady*, *Giglio*, and Rule 5-501 NMRA ¶ 49, filed July 31, 2024 in *State v. Baldwin* (N.M. First Judicial Dist. Ct. Cause No. D-101-CR-2024-00013) (finding that the "suppressed evidence is material" because "Defendant [Baldwin] was not in a position to forensically analyze, or ask the State to forensically analyze, the Teske-supplied ammunition as the State had done with other units of ammunition relevant to the *Rust* investigation" and "agree[ing] with Defendant [Baldwin] that had Defendant [Baldwin] had access to the Teske-supplied ammunition before the third day of the jury trial, Defendant [Baldwin] would have altered his approach to his preparation for trial and the trial itself").

the instant case and, even if applied, does not support dismissal or a new trial. *See* Aug. 23, 2024 Notice of Supplemental Authority. *Ware* applies "to determine whether the State should be sanctioned for failure to gather evidence from a crime scene[.]" *State v. Ware*, 1994-NMSC-091, ¶ 23, 118 N.M. 319. Here, Defendant does not argue that the Teske-supplied ammunition was ever present at the crime scene. Thus, *Ware* is not applicable. *Cf. State v. Perez*, A-1-CA-31980, mem. op. ¶ 25, 2014 WL 1314941 (N.M. Ct. App. Feb. 17, 2014) (non-precedential) ("Insofar as the evidence was not present at the crime scene, but rather appears to have been in Defendant's possession, we note that it is not clear whether the foregoing principles [including *Ware*] are applicable to the matter at hand." (bracketed text added)).

43. Furthermore, even if *Ware* applies, for the same reasoning set forth above, Defendant cannot establish that the Teske-supplied ammunition is material to her defense given that the ammunition was available to her through her own witness at the time of her trial. *Ware*, 1994-NMSC-091, ¶ 25 (holding that evidence is material "only if there is a reasonable probability that, had the evidence been [available] to the defense, the result of the proceeding would have been different." (citations and internal quotation marks omitted)).

CONCLUSION

IT IS THEREFORE ORDERED that Defendant Hannah Gutierrez-Reed's Expedited Motion for New Trial or for Dismissal for Discovery Violations and Under the Court's Inherent Power is hereby DENIED.

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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