TRANSCRIPT: "Rust" Armorer to Testify against Alec Baldwin?
Date: June 10, 2024

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Welcome everybody. Welcome to today's slightly delayed episode of the law of self defense. Yes, I am back in the office back on my for weeks. Um, and at the last second, it turned out my computer, my computer was angry with me for having been away for so long. Hopefully all of you will forgive me. My recent travels, but we are back, should be back on our normal schedule for quite some time doing these laws of self defense live streams most days of the week.

And I of course, am Attorney Andrew Branca for the law of self defense. And today we are here to talk about the Alec Bolton case, his upcoming trial on charges of manslaughter, manslaughter in the killing of cinematographer Helena Hutchins on the set of rust. And his highly paid legal defense team is filing all kinds of motions, uh, some substantive, some just kind of peeing into the wind but trying whatever they can to benefit their client as they're supposed to do.

Defense counsel. Their obligation is to zealously advocate for their client. Uh, unfortunately, based on facts and law, uh, their client is almost certainly guilty of the involuntary manslaughter with which he is charged over the death of Lana Hutchins because he pointed what he knew to be a real gun directly at. Helena Hutchins operated that gun fired a bullet into her causing fatal injury, all of which could have been avoided if he'd won, bothered to check to see if the gun had live rounds in it or barring that had simply not pointed the muzzle at her as he's not supposed to do. Or according to S A screen screen Actors Guild, uh guidelines and not operated the gun while the muzzle was pointed at her, all of which is reckless creation of an unjustified risk of death to another, which is the basis for involuntary manslaughter in this case. So let me take a quick look and make sure we're streaming where we are supposed to be streaming and it looks like we are p that check. You never really know with rumble.

Let's take a look. Come on, rumble and rumble is working as well. So we have, uh, a couple of interesting things that have happened in, uh, various motions being filed in this case, which is supposed to start in, uh, under exactly a month. So jury selection is scheduled for July 9th and the first day of the trial, proper opening statements should be made on July 10th according to the current trial schedule. Now, what's been interesting in the last week, uh, while I've been gone is a number of interesting motions, one of which is a state motion and of course, a motion is simply a request to the court to order that something be done. Uh, and the state has submitted a motion to the court a request to the court that the court order, uh, that Helena, sorry that Hannah Guterres be granted immunity, use immunity and compelled to testify in the Alec Baldwin trial.

Now, Hannah Guterres was, of course the Armorer on the set of rest, she had her own involuntary manslaughter trial earlier this year. Um, because she allowed live rounds to be in the gun that was in the hands of Alec Baldwin when he shot and killed Helena Hutchins and she was found guilty of involuntary manslaughter by the jury unanimously beyond any reasonable doubt. And then she was sentenced to 18 months, the maximum allowed under New Mexico law 18 months in prison and found to be a violent offender, meaning she's required to serve 85% of that sentence. She otherwise would have been required to serve only half of the 18 months. The judge was very unhappy with, uh, Hannah Guterres for a number of in jail statements and phone calls she made that were derogatory to the judge to the court, um, to everybody really except for Hannah Guterres who still seems to believe that none of this is actually her fault and she's just being mistreated.

So now that she's been convicted, it's, um, expected I guess that she'll appeal her conviction. I'm not sure why. Uh First of all, there aren't many grounds of appeal. Uh Second, by the time she appeals she'll have served the sentence. Uh It's very much a Kim Potter type of situation by the time she'd get around to having her case heard by an appellate court. Um, and a decision rendered by that appellate court, she'll have long since served the 18 months, but an appeals process is possible and the, the state wants her to be compelled to testify at the Alec Baldwin trial. And so they're asking the judge to grant use immunity, meaning anything that uh Hannah Guitars would say during her compelled testimony in the Alec Baldwin trial could not be used against Hannah Guterres say, for example, she appeals and the appellate court were to reverse her conviction and she were to be tried again.

Um The statement she makes in the Alec Baldwin trial could not be used against her in that second trial. So we're gonna read through that motion uh that the state has submitted. Naturally, the defense is contesting um this motion and there's, there's going to be a hearing later this month, an oral argument hearing June 21st, um where the parties will argue all this out. So we'll be sure.

And I expect that to be live streamed and we'll be covering that live stream when it happened. Another interesting thing that's happened in the last few days is the defense had the parties are obliged to notify each other of the witnesses they intend to call. Uh, so that at least in, in New Mexico and many other states, the each party can interview the witnesses before the trial. And I think this is a great idea because I ideally a trial ought not to have any surprises for the parties involved. Everybody should know what witnesses will appear, what legal arguments will be made, what evidence will be presented and what those witnesses will say on the witness stand. Um The purpose of the trial is not to evinces evidence or find evidence or get surprising statements out of witnesses. The purpose of the trial is simply to be to present the evidence that everyone knows the parties involved knows will be presented to the jury so that the jury can play the role of finder of fact.

So there ought to be no gasp moments uh to the parties in the course of the trial. And a great way to ensure that is to have both parties interview each other's witnesses before. So they know what will be said. Now, the defense had listed a number of witnesses on their witness list

to the stage. Uh And now the defense is saying who we've interviewed these people and we don't want them, we don't want them testifying. So we're gonna withdraw them as witnesses.

The state is objecting because the state knows what the real reason is for the defense not wanting these witnesses to appear in the trial. And that is because their testimony will be harmful to defendant Alec Baldwin. So the state wants these witnesses to appear. Uh So we'll go over some of the, um, the counter veiling motions that are being uh submitted by the parties about this issue of whether or not the uh defendant witnesses should be nevertheless called to testify. Even though the defense doesn't want them anymore.

The defense is pretending that they have only the purest of motives. Uh They just want the, they want to streamline the trial. Uh So they're just asking the court to allow them to these, these witnesses, these are not the witnesses, you are looking for judge. Um So that also will be argued orally on June 21st, the same live stream that will address this immunity question.

So we'll cover that as well when that happens. But right now, what we have to look at is the motions themselves. So let's jump into the formal start of today's show and today's sponsor is none other than CCW Safe, a provider of legal service membership. So many people mistakenly call self defense insurance in effect CCW safe promises to pay their members legal expenses. If the member is involved in a use of force event, they do much more than that. But that's the, the key part of their value proposition and these legal expenses can get big fast folks in the killing cases that I consult on where the defender has been compelled to use force in defense of themselves, their family or their property and now they're charged with murder or manslaughter.

It's not unusual. It's common for the defense to run through $200,000 before they even get to trial in legal expenses. So, unless you have that kind of money stuffed in a mattress, it could be helpful to have that kind of financial backing behind you. We'd like to think that the amount of money you have doesn't affect the kind of justice you get.

But I can assure you it does illegal battles like any other battle, the side with the greater resources has a definite advantage in winning that battle. The state, the prosecution has effectively an infinite amount of resources. You do not want to have a starved defense.

You want the most robust defense possible CCW safe, helps that happen by covering your legal costs. Again, they do more than that. They also fly in a team of professional investigators to be your investigators. Otherwise, the only investigators in the case work for the prosecution and much, much more. Um there are other companies that purport to offer similar services.

Some of them are worth considering uh may be a better fit for you than CCW safe. Uh Others are dumpster fires that I simply cannot in good faith recommend to anybody. Don't make a bad decision here. Don't imagine you're protecting yourself with one of these plans. Know that you are now personally, I found CCW safe is the best fit for me. I'm a member of CCW Safe and do a lot of partnering with them. Uh My wife, family is a member of CCW Safe.

If you'd like to learn why I trust CCW Safe, you can point your browser to law of self defense.com/trust. I have a little bitty there explaining exactly why I chose them. And there's also a discount code there where you can get 10% off your CCW safe membership when you join as well. Again, that's law of self defense.com/trust. All right. So, 01 of the reasons I've been away um the last few days at least um is I've been riding around the Colorado Rocky Mountains with Will Parker. Will Parker is a self defense instructor out of Montana.

A graduate of the law self defense instructor program does great work up there. Um I've personally taught at Will Parker's a great facility. Uh live fire outdoor classroom space, wonderful place.

Uh And he draws students from all over from within at least five or six of the adjoining states up there around Montana. Encourage you to take a look at Will's work. It's uh let's see. It's the link is fmgw.net if I recall correctly and Will and I were just riding our motorcycles around Colorado for the last few days. Uh Here's a picture from a couple of days ago. We were at the top of Independence Pass uh just south of Aspen, Colorado.

12,095 ft. Let's see if I can make that a little bigger. There we go. That's me on the left and Will on the right. Both of us were writing uh our own BMW R 1250 GS adventure bikes, essentially copies of each other twins.

So that was uh a great fun and I trust that will enjoyed I did my best to show him the very best riding that Colorado has to offer asphalt riding. Uh We only did a very small amount of dirt. Um But in terms of asphalt writing, I think, uh I think I picked some pretty good routes. All right. So let's dive into this motion here. Zoom that up. State of New Mexico.

The states opposed motion for use immunity for Hannah Guterres. So the states notifying the court, they're asking the court to grant Hannah Guterres use immunity immunity from the use of her statements. Uh and notifying the court that this motion, this request by the prosecution is opposed by the defense.

And again on June 21st, we'll hear oral arguments on this issue, but this is the state's argument. It's only about a four page motion comes. Now, the State of New Mexico buying through special prosecutors carry T Morrisey and Linda O. Johnson Johnson was only recently added uh as a special prosecutor for the Baldwin trial. She was not involved in the Guterres trial, but now they are cos special prosecutors who respectfully request this court grant use immunity to witness Hannah Guterres and his grounds state as follows.

One, MS Guterres is listed on defendant Baldwin's witness list and on the state's witness list by proxy as the state has reserved the right to call all witnesses named by the defendant MS Guterres. So when the state provides the court with its witness list, it lists its witnesses and then it adds, and all witnesses uh identified by the defense, MS Guterres submitted to a pretrial

interview on May 14th 2024 when she asserted her fifth amendment privilege to all substantive questions. So they tried interviewing Guterres.

This is, of course, after her conviction and sentencing, she's, she's in prison right now serving that sentence. Um Of course, she's hoping to appeal if she appeals and is successful, she may get a new trial. So she, she didn't testify in her original trial and she doesn't want to be making statements now that could be used against her in a retrial. So she asserted her fifth amendment rights not to self incriminate. Two presumably defendant Baldwin named MS Guterres as a witness. So his counsel can obtain potentially exculpatory information from MS Guterres that is relevant to the issue of proximate cause.

In other words, what was it that caused Helena Hutchins death. I'm pretty sure it was the gun in Alec Baldwin's hand. Uh but the defense will be trying to argue that well, really it was other people's fault.

Everybody's fault except for Alec Baldwin. The other people were the proximate cause the fundamental cause of Helena Hutchins death. The prosecution continues. If MS Guterres is not granted use immunity, the defendant will likely attempt to have her previous statements admitted as exceptions to the rule against hearsay. These would be her police interviews. For example, this requires the defendant to demonstrate that MS Guterres is unavailable due to the assertion of her fifth amendment privilege. So if MS Guterres were willing to testify, the defense would be required to call her to testify in person as a witness, then of course, Guterres would be subject to cross examination by the state.

The defense doesn't want that the defense wants only her selective statements from the police interview admitted. But to get those admitted, they have to be able to tell the court that. Well, we're, we should be allowed to admit the recording of her prior statements rather than have her testimony, testify in person because she's gonna plead the fifth and won't be available to testify in person.

That objection goes away if she's granted immunity and is compelled to testify. Three, if MS Guterres were not compelled to testify by the court and her statements were to be admitted. Uh The video recordings, the state would be unable to cross examine MS Guterres about her statements and the state would also be unable to present testimony from MS Guterres that is inculpatory to defendant Baldwin.

So not exculpatory but inculpatory, consistent with Baldwin's guilt four upon information and belief. Should the court grant use immunity to MS Guterres and order her to testify truthfully in the trial of defendant Baldwin. MS Guterres would testify that Mr Baldwin was inattentive during the firearms training session she conducted with him. Mr Baldwin indicated an apparent willingness to participate in additional training the following day with his holster but failed to do so. M Guterres would testify to whether firearms training with Mr Baldwin consisted of, she would testify that Mr Baldwin was a producer and had the freedom to do whatever he wanted and the other producers had to reel him in all the time.

Mr Baldwin would become upset and have emotional fits. Mr Baldwin was not supposed to be cocking the gun or pulling the trigger during the rehearsal when the gun went off and killed Helena Hutchins. Mr Baldwin would frequently rush her when she was loading unloading weapons and that there were two other actors on the set of rust that regularly conducted their own safety checks of their guns. MS Guterres would also likely testify that actors are not supposed to point their guns at crew members and that she offered Mr Baldwin an inert gun to rehearse with just before the shooting of MS Hutchins, but either Baldwin and or Assistant Director David Halls demanded the real gun be provided. New Mexico law states that the court may grant the state's motion for use immunity if the court finds the testimony may be necessary to the public interest.

And that MS Gutierrez is likely to refuse to testify on the basis of her privilege against self incrimination. Six M. Guterres possesses information that is exculpatory consistent with innocence to Mr Baldwin and necessary to his defense. And she also possesses information that is inculpatory consistent with guilt and would aid the state in the prosecution.

And Mr Baldwin, the jury should hear all of the information MS Guterres has regarding Mr Baldwin, both exculpatory and inculpatory and counsel for both sides should be permitted to fully cross examine MS Guterres seven. The state is not offering MS Guterres a benefit for her testimony against Mr Baldwin. The grant of use immunity would only protect MS Guterres from her statements during the Baldwin trial being used against her. Should her appeal be successful? And the state would be unable to use any of her statements to pursue other future charges against MS Guterres based on her testimony eight and quoting here from um New Mexico, it looks like a New Mexico Supreme Court decision. State the Ballinger quote under a grant of use immunity.

The prosecution promises only to refrain from using the testimony in any future prosecution as well as any evidence derived from the protected testimony under use immunity. The prosecution may still proceed with charges against the witness so long as it does not use or rely on the witnesses testimony or its fruits. Close quote, moreover, the state would be free to prosecute Miss Guterres for perjury. Should she perjure herself during her testimony? In the Baldwin trial? Nine, defense counsel, Sarah Clark opposes this motion 10. The defendant's opposition to this motion is a clear indicator that the defendant intends that only exculpatory testimony from MS Guterres be presented to the jury and that the exculpatory testimony take place in a vacuum.

The jury should hear all relevant testimony from MS Guterres. The state respectfully request this court grant used immunity to MS Guterres and order her to testify in the trial of Alec Baldwin signed by special prosecutors, Kerri Morrissey and Linda Johnson. So as a defense attorney myself, folks, I am uh less than completely sympathetic to the argument that the, the state as well as the defense are entitled to a fair trial. Uh But the role of the jury is to be the finders of fact and therefore they should hear all relevant fact that isn't excessively prejudicial

and of course, that includes evidence not favorable to the defense. Otherwise there would be no point to the trial.

Uh Remember everything the prosecution ever wants to admit is evidence is always going to be prejudicial to the defense. That's the role of the prosecution to try to prove the defendant guilty beyond a reasonable doubt. And again, this will be, we, I couldn't find a uh contesting motion, a responding motion from the defense here. So I maybe that'll come before the June 21st oral arguments. I would think so. Uh But um, it would be nice to have that.

So we know what the defense reasoning is likely to be in the oral arguments. I would expect the court would require that. But in any case, we'll be listening to the oral arguments on this question on June 21st in the expectation that they will be live streamed. And this is just the notice of that. The honorable judge Mary Marlowe summer will hold that hearing Friday. June 21st 9:30 a.m. for 45 minutes on the question of the state's expedited opposed motion for use.

Whoops, this is what I wanted to blow up. There we go. Another issue that came up is the defend defense wanting to pull back some of the witnesses they had proposed for the trial. They say they're just trying to make things easier for the judge. Is that really why the defense wants to pull back some of its witnesses? So let's take a look. Defense defendant, Alec Baldwin's notice of withdrawal of witnesses from the defendant's own witness list. Defendant Alexander R Baldwin the third by and through undersigned counsel respectfully notifies the courts of defendants withdrawal of witnesses from the defense.

Second, amended witness list. While the defense maintains the state's motion to exclude defense witnesses. So the, the defen the state had objected to some of the defense witnesses, probably because the, the testimony they would offer would be irrelevant, immaterial, not relevant to the criminal charge or any legal defense. Um So the state had objected to some but not to others. Uh And the defense is doing some slate of hands here. They're saying, well, you know, uh the, the state had objected to some of our witnesses.

So we're gonna be nice and pull those back. And by the way, we're gonna pull back some other witnesses. The state did not object to just to make things easier for you your honor. Uh So while the defense maintains that the state's motion to exclude defense witnesses is ill founded and contrary to both the law and this court's order, the defense will consent to the relief sought by the state's motion as to five of the nine witnesses. The state seeks to exclude and then they list five witnesses here.

None, none of these names are familiar to me from the Hannah Guterres trial. The defense further, in addition to the witnesses, the state had objected to the defense further notifies the court that it will eliminate a further six witnesses and they list several here. Let me see if I recognize these, I guess Gabriel Gonzalez, was she from the Hannah Guterres trial? I'm not sure if she was like the um like the uh the set manager, whatever they call that, John Zello, that's a familiar name.

But the others, I don't readily recognize the defense witness list now consists of a total of 15 witnesses after removing these six in the previous five. So they had over 30 of the four witnesses remaining that are the subject of the state's motion that the state had objected to. Uh the defense stands on its arguments and notes, there can be no genuine assertion of prejudice to the state from their timely inclusion.

I don't think we need to read about those. Those aren't very interesting. The interesting ones are these six, this, this, the defense notifies the court.

It will eliminate a further six witnesses that the state had not objected to just in the interest of streamlining the trial. So let's take a look at what the state the prosecution has to say about this. They don't like it. They want those six witnesses that they had never objected to, to stay on the witness list to testify at trial. So here's their response a couple days after that defense motion uh comes now the State of New Mexico by its special prosecutors, Carrie Morrisey and Linda Johnson uh submit the following response in opposition to the defendant's motion to exclude previously disclosed witnesses introduction on February 6th. The state filed its witness list naming its fact witnesses as well as its proposed expert witnesses. On March 1st.

The defense filed its witness list naming David Halls as their only witness. On April 19th, the defense filed its first amended witness list, naming an additional 18 witnesses on May 6th, the defense filed a second amended witness list naming an additional seven witnesses for a total of 26 witnesses. So part of this game folks is every one of these witnesses needs to be interviewed by the state in preparation for the trial. So if the defense can add 100 witnesses, why not to its list? So the state will have to consume resources in interviewing these. Now, I said earlier that when I was talking about CCW safe, um that the prosecution has effectively infinite resources, but that's not really true.

Uh Here, for example, we have these two special prosecutors, if they have to interview 100 proposed defense witnesses before trial, that takes a lot of time to do that. So when we see the defense propose a large number of witnesses and then suddenly cut that list in half. It makes you wonder whether those witnesses were really intended to testify for the defense or if this was just a strategic burning of state resources.

So for a total of 26 witnesses for the defense on that same day, the state filed its second addendum uh to its witness list. The state indicated that it was also listing on its witness list. Any witnesses disclosed by the defense called as a witness by the defense are listed on the defense witness list. So I mentioned this at the start of today's show. The state is basically saying here's our enumerated list of witnesses that we are prepared to call to put the defense on notice, but we have a catch all at the bottom. And also every witness listed by the defense is incorporated as a perspective, a potential state witness, the deadline for filing pretrial motions was also May 6th and in an effort to preserve its right to challenge the defendant's May 6th.

Disclosure of nine additional witnesses, the state filed a motion to exclude those witnesses. So the state here is saying we didn't necessarily want to exclude those witnesses, but because the

defense filed these additional nine witnesses on the last day to provide notice, we filed an objection just so we'd have the option of excluding them if we thought it was necessary at a later date, if they hadn't find filed that objection, that proforma objection to these nine witnesses, they would have for have lost the ability to contest those witnesses. So the state is saying, hey, this was just a proforma objection, not necessarily a substantive objection. We were not necessarily saying we didn't want them.

We just wanted to reserve the right to be able to say we didn't want them. Uh The state continues. However, the parties continued interviewing witnesses as the pretrial interview deadline is June 5th, which just happened five days ago, the state continued working through the weekend of June 1st to second investigating the statements of the defense witnesses and concluded that there was no prejudice to the state from the defendant's disclosure of the additional witnesses. So this proforma objection, the state decided. All right, it's not necessary. We don't have to object.

We're, we're fine with these witnesses testifying, most of the witnesses were interviewed and the state had been working overtime investigating their statements. Therefore, even though the state initially filed a motion to exclude the witnesses on the deadline upon closer review and investigation, the state concluded there was no prejudice from the defendant's disclosure. We're, we're fine with these additional witnesses. Meanwhile realizing that several of its witnesses were actually damaging to the defendant. The defense filed a notice agreeing that some of its witnesses should be excluded. The defendant's mo motion was not based on a desire to streamline issues or a good faith effort to reduce the number of its witnesses by a significant margin margin. And as a result consented to the relief sought by the state as to five of the nine last minute witness editions by the defense.

Instead, the state argues the defendant's motion to withdraw some of its witnesses was based on the fact that their witnesses actually provided information during pretrial interviews that supports the state's theory of defendants, recklessness and involuntary manslaughter of Helena Hutchins. In fact, during his pretrial interview, Zachary sneeze be told the parties that he positively saw the defendant Alec Baldwin pull the trigger when he shot Helena Hutchins Ouch. Over the weekend, the state continued to work and determined to withdraw its opposition to the defense witnesses. So here the state saying, hey, we, we had already made the internal decision to withdraw our objection. We want, we want these listed defense witnesses to testify continuing. Now, the defense now moves asked the court to exclude the very witnesses it listed on its witness list and whom the state also notified.

On May 6th, it could call at trial. The defendant's motion is frivolous and must be denied. The witnesses have been interviewed and the state timely notified the defense. It reserved the right to call any witness disclosed on the defendant's witness list. The defense has suffered no prejudice and their motion must be denied. Now he is the the argument by the state that was just kind of their summary.

One exclusion of witnesses is not justified and they cite some case law here. State V Harper, New Mexico Supreme Court, quote, exclusion of witnesses requires an intentional violation of a court order, prejudice to the opposing party and consideration of less severe sanctions. So the New Mexico Supreme Court is trying to make it hard for one party to demand that a witness not testify. Why? Because the jury is entitled to hear relevant testimony as the finders of fact in Harper, the case just cited the court pointed out that witness exclusion and dismissal are extreme sanctions to be used only in exceptional cases. The Supreme Court, meaning the New Mexico Supreme Court later sought to clarify the circumstances under which a court may permissibly exclude a witness as a discovery sanction as punishment to the other party when considering sanctions, prejudice to the opposing party is a central consideration. So what we're talking about are things like an ambush witness. So, um, again, the reason that the parties notify each other of their intended witnesses is so that witness can be interviewed by opposing counsel and opposing counsel can prepare for the trial to cross examine that witness at trial.

There ought to be no surprises at trial to the parties by a witness's testimony. That's the idea here, transparency in argument and evidence. But you can imagine that if uh a witness was brought up at the last second before trial and opposing counsel does not have the opportunity to interview that would be an ambush witness, that it might be an appropriate remedy sanction for the court to say, well, I'm not going to allow that ambush witness to testify because you didn't provide opposing counsel with the opportunity to prepare and that would be prejudice, um, you know, a detrimental effect on opposing counsel. That's what they mean by prejudice here. It's not like racial prejudice.

It's, it's unfair harm to opposing counsel. So when considering sanctions, like excluding witnesses, prejudice to the opposing party is a central consideration. The court should consider prejudice as it decides what type of sanction to impose. In general. The trial court should seek to apply sanctions that affect the evidence at trial and the merits of the case as little as possible. Courts should apply the extreme sanction of exclusion of a party's evidence.

Sparingly. The decision to exclude evidence calls on judicial discretion to weigh all the circumstances including willfulness in violating the discovery rule, notifying, notifying the other party of the witness, the resulting prejudice to the opposing party and the materiality of the precluded testimony materiality. Meaning it's, it's relevant to material argument on the elements of the crime or any legal defense quoting. Now from that Harper Supreme Court decision, quote, even when a party has acted with a high degree of culpability, the severe sanctions of dismissal or the exclusion of key witnesses are only proper where the opposing party suffered tangible prejudice. When exercising their discretionary power, our courts must be ever mindful of the fact that witness exclusion is a severe sanction and one that should be utilized as a sanction of last resort. The Harper court discussed in more detail, the need to show prejudice, unpredictable harm to opposing counsel, un un unforeseeable by them in ambush.

Quote, quoting Harper. Now, the requirement that any serious sanction against the state be conditioned on a finding of prejudice is well established in our case law, prejudice must be more than speculative. Therefore, when discovery has been produced, late, prejudice does not accrue

unless the evidence is material and the disclosure is so late that it undermines the defense's preparation for trial.

The potential for prejudice is manifest is apparent when, for example, material evidence is withheld altogether or where the state withholds evidence until the 11th hour and then springs it on the defendant. However, when discovery is merely delayed in reaching the defendant or the defendant has knowledge of the contents of the unproduced evidence. Determination of prejudice is more elusive, like outright dismissal of a case. The exclusion of witnesses should not be imposed except in extreme cases and only after inadequate hearing to determine the reason for the violation and the prejudicial effect on the opposing party. Close quote.

The New Mexico Supreme Court recently clarified its view of Harper. The Harper Court did not establish a rigid and mechanical analytical framework nor did Harper embrace standards so rigorous that courts may impose witness exclusion only in response I would have written in response to a mere discovery violation that are egregious blatant and an affront to their. Let me, let me read that again.

Nor did Harper embrace standards so rigorous that courts may impose witness exclusion only in response to discovery violations that are egregious blatant and an affront to the court's authority, such a framework and such limitations would be unworkable in light of the fact that our court's authority to exclude witnesses is discretionary and courts must be able to avail themselves of and impose meaningful sanctions where discovery orders are not obeyed. And a party's conduct injects needless delay into the proceedings. As emphasized by another case, State V Lamour, New Mexico Supreme Court sanctions should be used to punish culpable conduct. There is no evidence that the state here ignored the court's scheduling order by requesting the extreme sanction of exclusion of witnesses. The defendant tempts this court to abuse its discretion. Let's see, the defendant is in his motion only claims prejudice but makes no effort to demonstrate how he has been prejudiced by the state.

Specifically listing the witnesses. The state had notified the defense on May 6th. It could call at trial. In other words, the state's arguing here that, hey, the defense is trying to say this is some kind of ambush witness, but it was on their list. They knew this witness, they knew what this witness was going to testify.

There's no prejudice to them. The fact that the pretrial interview deadline expires June 5th and the defense canceled pretrial interviews of three witnesses which had been scheduled for June 3rd and fifth does not constitute prejudice as the state has offered and will agree to an extension of the pretrial interview deadline to accommodate rescheduling the three canceled pretrial interviews. So I apparently the defense was arguing that they, they've been harmed because they had scheduled interviews with some of these witnesses before the deadline for doing so. And then when they, when they withdrew, there are witnesses from their list, they canceled those interviews and now the deadline to do interviews is over.

So that's our prejudice. The state saying no, that's not prejudice because we'll agree to extend the interview deadline. So you don't suffer prejudice. The state continues. More importantly, the two witnesses listed by the state, um on its third addendum to the state's witness list are defense witnesses who have already been interviewed by the parties.

Notably MS Gutierrez, the Armorer has already been listed on several of the state's witness lists. Mr Sneeze Be and Gandy were listed on the defendant's witness list and have already been interviewed by the parties other than being concerned that the truth will actually be revealed by its own witnesses. The defendant has not even attempted to demonstrate how he is prejudiced by the state's notice that it will call some of the witnesses. The defendant himself listed on his witness list but later withdrew after the defense learned how damaging the defense witnesses testimony would be to the defendant. Exclusion of these witnesses is not appropriate nor warranted.

The fact that the state withdrew its previous motion to exclude is of no moment is irrelevant. The fact remains that there is no evidence, the state intentionally violated the court's rules. And more importantly, the defense has not been prejudiced, a requisite, a prerequisite that must be established before exclusion of witnesses is justified. The defendant complains that it canceled the pretrial interviews of three of the five witnesses whom the defense withdrew. However, the state has offered to extend the deadline for conducting pretrial interviews so that the defense can reschedule those witnesses for pretrial interviews. The state submits that it is appropriate that it is the appropriate remedy that this is the appropriate remedy, rescheduling the interviews, not exclusion of these witnesses entirely accordingly. The state respectfully request the court reject the defendant's request to exclude the witnesses.

The defendant himself listed but later withdrew simply because they will testify to damaging information against the defendant argument. Two judicial estoppel does not apply. Estoppel is a notion that um a decision was made or not made and the other party has relied on that and their reliance now will cause them harm if the state suddenly decides to change its mind. Um, an example might be um in, in outside of a legal context.

So you work for a company and your company requires you to submit for vacation days well ahead of time, six months ahead of time. So you wanna take your family to Disney, uh the first two weeks of June and in January in a timely manner, you request vacation for the first two weeks of June and the company says, ok, we grant you the first two weeks of June as your vacation time. Having received that notice, you book your airline tickets you buy the tickets to Disney, you book your hotels.

Let's presume this is all non-refundable money. And then after that, the company changes its mind and says, sorry, we can't give you that vacation. After all, the doctrine of estoppel would say that. Well, they told you you could, you relied on that representation, you will now incur substantial damage for that reliance, that good faith reliance if they're allowed to change their mind. So estoppel would prevent them from changing their mind.

So here argument, two judicial estoppel does not apply. The prosecution argues to the court, the important interest in the enforcement of criminal law and the public interest in the accuracy and justice of criminal results are not present in civil litigation and outweigh the concern in civil cases for judicial economy. So the defense has made an argument that, well, we should exclude these witnesses, not because they're harmful to us to our client, but simply, you know, there's an interest in streamlining the trial and making things more efficient. And the state here is pointing out that, well, that's, that's much more true in civil trials than in criminal trials. The, the the public interest, the public argument, the public policy argument for a criminal trial is much more focused on arriving at some semblance of the truth uh than in the civil trial.

That's why there's a much higher standard of guilt. For example, proof beyond a reasonable doubt in a criminal trial and only preponderance of the evidence in the civil trial. It's also kind of a tweak at the defense counsel, most of whom are civil litigators, not criminal defense attorneys. The state continues. Uh They're quoting here from State v Arevalo, another New Mexico. Uh This is a New Mexico Court of Appeals decision, but it's quoting a US Supreme Court decision in Arevalo.

The court of appeals rejected the application of non mutual collateral estoppel raised by the defendant in a criminal case in order to prevent the state from prosecuting him, prosecuting him after his co-defendant was prosecuted based on the same evidence, facts, charges and found not guilty. The court of appeals reversed the district courts. The trial court's dismissal based on non mutual collateral estoppel. It's evident from the opinion reversing the trial court that the New Mexico courts are reluctant to apply legal doctrines like estoppel from civil law. In the criminal context. In this case, defendant is asking the court to apply judicial estoppel found applicable in civil cases to the state's discretionary decision to withdraw a motion. It had previously filed, the state was unable to find any criminal cases in which the doctrine of judicial estoppel was applied in a criminal case.

And the defendant cites to no such case accordingly. Based on the court of appeals, rejection of the application of civil, non mutual estoppel to a criminal case. It is logical to conclude that our appellate courts would also reject the application of judicial estoppel to this criminal case. Therefore, the state respectfully requests this court deny defendant's invitation to judicial judicially stop the state from opposing the exclusion of the defendant's witness witnesses previously disclosed. So the defense is trying to argue that, hey, the state had objected to these witnesses and we relied on that objection when we withdrew the witnesses and therefore, they should be estopped from changing their mind. The state is saying, well, that's a doctrine that applies in civil courts but not in criminal courts. So we reserve the right to withdraw our objection to those witnesses and call them alternatively, the state continues.

If the court were to consider the doctrine of judicial estoppel, its applicability to this case is not warranted. Judicial estoppel is a doctrine that prevents a party who has successfully assumed a certain position in judicial proceedings from then assuming an inconsistent position, especially of doing so, prejudices a party who had acquiesced in the former position to prevail under the doctrine of judicial estoppel. First, the party against whom the doctrine is to be used here

against the state must have successfully assumed a position during the course of litigation. Second, that first position must be necessarily inconsistent with the position the party takes later in the proceedings. And finally, judicial estoppel will be applicable when the party's change of position prejudices the party who had acquiesced in the former position. The record in this case is crystal clear that there was never any hearings or other judicial proceedings in which the state's initial motion to exclude certain defense witnesses was adjudicated by the court.

The defendant's fortuitous acquiescence to the exclusion of some of the defense witnesses it listed. But who turned out to offer inculpatory guilty information against the defendant does not qualify to meet the first element requiring success in the position previously assumed for the judicial estoppel to apply. It is clear from reading the cases in New Mexico that success in a prior legal proceeding means persuading a judge hearing officer tribunal or other arbiter and obtaining a favorable order. Based on the relevant argument is a crucial element to judicial estoppel in the context of judicial estoppel.

To successfully assume a position means to successfully argue that position here, the court did not issue an order granting the state's motion to exclude. In other words, this prosecution is arguing that hey, we asked the court to exclude, but the court never actually did that. It was just a request and judicial estoppel does not apply. If all we did was make a request, it has to be some kind of decision that the other party then relied on. For example, in my, in my vacation, hypothetical.

Um I had said, well, you ask for the vacation and the company grants it and then you make your reservations and then the company changes its mind and then you're harmed and you would argue estoppel to prevent the company from changing its mind about granting you the requested vacation here. The state is saying that's not what happened. The state is saying you made the request but the company never granted your request. But based on your request, you made your reservations, incurred those costs and then the company denied your request. Well, that that harm is your fault. You didn't make those reservations in reliance on the company's assurance. You made it based only on your simple request.

That's not enough for estoppel. So here, the court did not issue an order granting the state's motion to exclude the witnesses. The defendant's partial acquiescence to the motion does not constitute success in the position by the state accordingly. The defendant has failed to satisfy satisfy the first requisite element for judicial estoppel to apply. Even if the court were to find the first element is satisfied.

The defendant fails on the most important element requiring a showing of prejudice. The defendant has not shown because he simply cannot show that the state's withdrawal of its motion to exclude certain defense witnesses has prejudiced the defendant. First, the witnesses, the state intends to call a trial and for whom it has withdrawn opposition are defense witnesses who have already been interviewed by the parties. The defendant claims it is prejudiced because the pretrial interview deadline is June 5th and the defense canceled other pretrial interviews of other defense witnesses as to whom the state initially objected thereby leaving

the defendant without time to reschedule the three witnesses whose pretrial interviews the defense canceled to cure the scheduling issue. The state agrees to extend the pretrial motions deadline to allow defendant to reschedule the three pretrial interviews.

It canceled the reality. The prosecution argues is that the defendant has suffered no prejudice from the state's withdrawal of its motion to exclude these witnesses. And by the state's notification that it intends to call two previously disclosed defense witnesses indeed, in its May 6th witness list, the state notified the defense that it would also call any defense witness listed on any of the defendant's witness list. It appears the defendant realized over the weekend of June 1st and second that some of the listed defense witnesses offered damaging evidence against the defendant which he now seeks to hide from the jury. Defendant's motion fails on the merits and the law, his motion to continue to exclude these witnesses accordingly.

It must be denied. Lastly, the state submits that it has the discretion to withdraw its motion. The state simply withdrew its motion to exclude witnesses conceding that after pretrial interviews and further investigation, there was no prejudice from the defendant's disclosure of defense witnesses. Last minute disclosure. Indeed, most of these witnesses have been interviewed and the state has been able to follow up on those statements.

A prosecutor's pretrial decisions enjoy a strong presumption of regularity because of the broad discretion given to prosecutors in initiating and conducting criminal prosecutions. Therefore, absent a showing of bad faith. The state's withdrawal of its motion does not warrant review by the court accordingly.

The defendant's motion must be denied without a hearing, uh, and signed by the prosecutors. Now, there will be a hearing. It'll be the same day, uh, as the immunity hearing just prior to the immunity argument. That one was at 930 for 45 minutes.

This one's at nine o'clock. So Friday, June 21st 9 o'clock for 30 minutes. Um, defendants expedite a motion for court order excluding defense witnesses. That's what we just covered.

All right, folks. So there is another interesting motion that's been filed. Uh, but I'm not gonna cover it today because we're already an hour in and this is a pretty lengthy motion.

Uh, you'll remember that the defense had ask the court to dismiss the indictment and thereby dismiss the trial effectively not do the trial, uh, to dismiss the grand jury indictment. Uh, on the grounds that the, the legal argument presented to the grand jury was fundamentally defective and, and even if you believed everything the state argued, there was still not, not a crime here and that the prosecution had failed to provide the grand jury with evidence, failed to present evidence, uh, that they had, uh, miscommunicated a jury instruction to the grand jury and therefore the indictment should be dismissed. Uh This was motioned the, by both parties, this was argued orally before the judge, we covered this a couple of weeks ago uh in a live stream show and the judge ruled against the defense.

So the judge said I am not dismissing the grand jury indictment for failure to um argue a actual crime. But the defense had another argument for why the grand jury indictment should be dismissed. And that is on the grounds that the state improperly destroyed evidence, destroyed evidence as written here, defendant Alec Baldwin's a brief in support of its motion to dismiss the indictment with prejudice. Meaning Alec Baldwin, if the court agreed, Alec Baldwin could not be re indicted uh to dismiss the indictment with prejudice based on the state's destruction of evidence, which sounds terrible, right? Uh What they're referring to here is that when the, when the single action revolver in Alec Baldwin's hand that discharge and killed Elena Hutchins when it was sent to the FBI for testing to see if it could be fired without the trigger being pulled. One of the tests. The FBI does is to smack the revolver uh with a, with a mallet like a raw hide mallet. Um And see if the hammer will drop without the tr trigger being pulled.

And at some point, the FBI hit the rear of the cocked hammer so hard with this mallet that they broke it. That's the destruction of evidence the defense is claiming. Um, now the, the FBI had tested the gun prior to the mallet test to see if it could be fired without the trigger being pulled and determined that it was not possible for that to happen. Now, was the mallet test is essentially something that's intended to replicate.

Uh If there was a claim, for example, that the gun had been dropped and then it just went off when it hit the ground. So it's kind of a shot test, right. Uh Here, there, there's no facts to support that theory of the gun discharging Alec Baldwin did not drop the gun.

So it was in fact unnecessary on the facts of this case to do the mala test. So you could argue it was unnecessary to do the test. It was unnecessary for the gun to be destroyed to be broken in this manner. But of course, when you send the gun to the FBI, they, they just have a list, a checklist of various tests that they do. In fact, the FBI um uh lab tech who did this test actually was unfamiliar with the facts of the case. So he was just going through his checklist when he did the mallow test as a practical matter.

The mallow test was unnecessary because this was not a dropped gun case or, you know, something fell and hit the gun. Uh And that's why it discharged. There's no such claim being made, but the defense is now arguing by the way, just a month before trial. Um that the everything should be dismissed. The grand jury indictment should be dismissed with prejudice because the state destroyed evidence relevant to the defense. Uh I think we'll do this, this motion, uh, in tomorrow's show, it is 25 pages long. All right.

So this is the point folks at which we turn to Q and A questions and comments that I will address. Uh, but the Q and A portion of the show is for law of self defense members only. This of course is being live streamed right now on youtube X and Rumble as well as to our law of self defense members on the law, self defense member live stream and the law of self defense member chat. Um We'll continue the show. So if you're a member watching on the live stream or just a member, and you'll want to go over to the member only live stream for the rest of the show.

Uh I will address questions and comments there. If you're watching on youtube X or Rumble, your show is about to end today. The good news is it's dirt cheap to be a law, self defense member. You can be a member for just 99 cents. Get a two week trial membership at law of self defense.com/trial 99 cents.

Folks, you'll immediately be mailed, uh emailed instructions for how to join us on the live stream, get all your questions and comments answered for free as part of your membership after the two week trial, it's still dirt cheap to be a member. It's only about 30 cents a day, less than $10 a month to enjoy the Q and A portions of the show. To get transcripts of every show.

If you prefer to read ra rather than watch video or listen to a podcast and there's many other benefits as well, but you just try it out for 99 cents and see how you like it. Um, you can always cancel your membership at any time. Although I will tell you, cancellations are pretty rare, but at least try it out for two weeks, 99 cents for two weeks at law of self defense.com/trial. Now, if you are a law of self defense member, uh, don't go anywhere. Uh, we're gonna take a 22nd break so I can shut off the other live streams. Um, and then we'll be back with all of you members on the member live stream. But if you're watching on youtube X or Rumble, this is the end of the show for you.

Thank you for joining us. And I look forward to seeing you all again. Again, members don't go anywhere.

We'll be back in 20 seconds. All right. So now it's just us members, uh, its law of self defense members. Let's take a look at what we have in the member dashboard in the member chat, uh, some discussion of the Trump stuff. Uh, let me go back.

I can't really cover self defense law and Trump folks. Um, it, it's not really a political show. I have my own opinions. Of course, uh, this notion, by the way of, um, I will say this about the, the Trump, the 34 convictions, they were predicated on, um, three underlying, I guess state misdemeanor offenses, all of which I believe were past the statute of limitations. But anyway, and the question came up as to whether the jury has to unanimous unanimously agree on which of the three predicate crimes they believe Trump is guilty of.

And the, the trial judge had told them, well, you don't need to agree. Um, if there are 12 jurors, four of you could agree that it was predicate crime one and four of you could agree. It was predicate crime two and four of, you could agree. It was predicate crime three. None of you are unanimously agreeing on any particular predicate crime. You don't have to all agree on the predicate crimes.

It's enough that if you all agree that one of the predicate, some combination of the predicate crimes were proven beyond a reasonable doubt. The effect of that, of course is that Trump was not found guilty of the predicate crime by a unanimous jury of 12 on any particular predicate crime. Now, I think that's wrong. I think it's unjust, I think it's a denial of due process. I think the jury should be required to find a defendant unanimous unanimously guilty of the specific crime

with which they are charged and with a specific predicate crime. But I will tell you that it is common in criminal law for that not to be required for the jury, the jury that if there are multiple paths to get rationales legal arguments to get to a guilty verdict, um, the jury does not necessarily have to unanimously agree on which path got them to guilty. I think that's wrong, but that's commonly allowed in criminal law.

Uh Now, having said that, I think there's, there's lots of reasons why this conviction of Trump is, is, is legally ridiculous and hopefully those will all be exposed. Let's see. Um Good question Alan asks on the question of immunity. The first part of today's show, um in light of the dual sovereignty approach, meaning the states have their own sovereignty and the feds have their sovereignty in court. Uh So the fact that you're charged and convicted or charged and acquitted in state court doesn't influence whether or not you can be tried in federal court. Right? We've all seen that.

Uh So when the state grants you immunity, that may limit the state's ability to use your testimony, your immunized testimony against you in a state court, does it limit the federal government from using that testimony against you in federal court? Now, I don't claim to be a immunity law expert. Uh My understanding is that it would not affect the feds at all. So you could be immunized by the state testify. So that evidence can, that immunized testimony cannot be used against you by the state government, but it could still be used against you by the federal government.

So if you're at risk of state and federal prosecution, I would suggest that state immunity is not enough. You're still, if you testify, you'll still be incriminating yourself in the federal context. Now, you do need to be able to make that argument to a court. Uh Here, for example, there, there's no realistic path by which Alec Baldwin would or, or Hannah Guterres, I should say, would find herself in federal court as a defendant. So I don't think she can credibly argue that, hey, even though I'm granted, assuming she is granted, um, use immunity in state court, I ST I still have to plead the fifth for federal court purposes. Uh I don't think that would hold up. I think the judge would compel her to testify.

Now, what if she nevertheless refuses to testify? Um Well, then the court can hold her in contempt. That's it. Sometimes people are held in contempt for a long time for many months. I've seen that happen with a journalist, for example, who uh where the court has uh, has ordered them to identify a source and the journalist says, no, I'm not gonna do that. Sometimes a journalist isn't held in jail for a year or more. Um I, if the, if the litigation is, you know, ongoing long enough, most of the time, uh contempt would be something under 30 days in a local jail.

Let's see. Um Zuza says the defense wants to bring in a list of celebrities to eye glaze the jurors is that who those witnesses are? Because I don't recognize their names, but I don't, I don't follow celebrities. Um And it's weird that I would not be familiar with the names if they had substantive testimony to offer from the, from the Hannah Gu terrorists trial.

Let's see. And Zuza says, man, it's almost like it would have been a better idea to have defense attorneys from New Mexico rather than corporate lawyers from New York. I mean, technically they have a, a defense lawyer from New Mexico, that's their local representative that's required. But how much, how much actual work, um that lawyer that local lawyer is doing his questionable at best at best. Uh Let's see.

And I think that's it. I think I got through all the question. Oh, no, here we go. No, that's it. All right folks. So I know I sent out the email at the very last minute. Uh Many of you will be watching this on replay.

I'll keep my eyes open for questions or comments put in the, uh the chat for the, the replay version of today's show in the blog. Uh But with that out of the way. I'll go ahead and wrap things up for today. I'll just remind all of you that if you carry a gun, so you're hard to kill. That's why I carry a gun. So I'm hard to kill. So my family is hard to kill, then you also owe it to yourself and your family to make sure you know the law.

So you're hard to convict as well. Until next time, probably tomorrow I remain attorney Andrew Branco for the law of self defense. Stay safe.