TRANSCRIPT: All Day Alec Baldwin Hearings! (Part 1 of 2)
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Welcome everybody. Welcome. Finally, sorry about the delay to the law self-defense show. I am, of course, Attorney Andrew Branca for the law of self defense.

So could all be here today.

My morning got a little complicated. Hence the uh 10 minute delay in starting the show. Here we are here, we are. Let me just pin this over here, make sure this is streaming over there and it should be, everything is working, right? Great.

Awesome. So of course, we're here today to talk about this a full day. Pretty much of Alec Baldwin hearings, Alec Baldwin, of course, is the actor, actor. Actually, I don't mind Alec Baldwin's acting.

Um He was good in Red October. Um actor, Alec Baldwin charged with involuntary manslaughter by the State of New Mexico over his shooting death of cinematographer Helena Hutchins on the movie set of Rust. And um because he was holding in his hand, what he knew to be a real gun pointed that real gun directly at Helena Hutchins never confirm there was no live ammo in the gun manipulated the hammer, arguably manipulated the trigger in any case, discharged the gun fired a live round that struck Helena Hutchins in the right armpit, traversed her body, breaking her spine.

The bullet exited the left side of her body, then entered the body of director Joel Souza standing behind her, embedded itself in his shoulder. He would survive that gunshot injury.

Helena Hutchins would not. And the state of New Mexico is appointed as a special prosecutor. Kerri Morrissey, normally a defense attorney, but uh appointed as a special prosecutor for this case.

She previously prosecuted the Rust set Armorer, Hannah Guterres for involuntary manslaughter in this matter just a month or two ago, convicted her and Hannah Guterres was sentenced to 18 months in prison by the judge, uh, Judge Summer and is, uh, currently serving that sentence. Now, it's Alec Baldwin's turn, Alec Baldwin appears to have hired much better lawyers than did Hannah Guterres.

Jason Bowles was Hannah Guterres lawyer thoroughly unimpressed by his performance, not only at trial, but at, um, pretrial investigative hearings between his client and investigators in which at times, Jason Bowles appeared to be playing on his phone rather than governing the framework of the interrogation, which is his job. In my opinion. As the counsel for his client, she said many damaging things in that interrogation, uh, that were used against her in court.

He's still her lawyer. By the way, there's a lot going on here.

Uh One of the things going on is that the state wants to try to compel Hannah Guterres to testify in the Alec Baldwin trial. Uh, she said she has stated through counsel that she intends to plead the fifth amendment if she's called to testify, but you're not allowed to plead the fifth for just anything. Uh, you're only allowed to plead the fifth for things that could incriminate you and if you're granted immunity, so those things can't be used against you, well, then you have to testify about that stuff too or be held in contempt of court. So that's one of the issues we'll be talking about today.

Uh Today will be two sessions. So there'll be two separate shows.

Uh Just to give myself a break, the morning session is going to be the hearing on defendants expedited motion to exclude witnesses. That's first, that's at nine o'clock.

So at the top of this hour, nine o'clock, um mountain time. Um and that's an interesting one because apparently the defense had listed on its witness list. You have, each party has to notify each other of their witnesses, uh their planned witnesses so that the opposing counsel can prepare for cross examination of those witnesses, impeachment of those witnesses. Um The defense had listed a bunch of witnesses and then interviewed them pretrial. And during the interviews, they realized the defense realized, oh my gosh, these witnesses are going to say things that are very damaging to our client defendant, Alec Baldwin.

So they decided they would remove them from the witness list. And now the state is saying no, no, no, no, no, no, no, no.

We still want them. We want those witnesses now.

Um So the defense is trying to get those witnesses excluded. Um The second thing that will happen this morning is that motion for immunity for Hannah Guterres that I just referenced, by the way, folks, it's important to understand that all this stuff, all this stuff that's happening today and everything that's happened so far with respect to Alec Baldwin, all these pretrial hearings and motions and of course, motions are just a request to the judge for a decision for an order on something. All of this sounds kind of technical and administrative and in some respects it is, but the these pretrial proceedings are often critically important because they define the legal battlefield of the trial.

So if all you watch is the trial, then you don't know what witnesses might have been excluded or what immunity might have been allowed or not allowed in a particular case. Um It's almost like before a football game, the, the teams get to argue about what the size and shape of the, of the field should look like the playing field and how goals are scored or not scored. All those rules for the game in a trial, the game of a trial are defined in the context of the these pretrial proceedings.

So this is all critically important stuff. This will, this will decide what arguments and evidence the jury gets to see and consider in arriving at a verdict of guilty or not guilty in this case.

So that'll be the morning session. And part one of this two part series of shows, um, the motion to exclude witnesses, the defense wants to keep witnesses out of the trial.

Uh, and the state's motion to compel Hannah Guterres to testify by providing her with immunity, which the defense opposes because the defense has the reasonable expectation. Then Hannah Guterres is going to testify about stuff that's very harmful to their client. Uh Then, uh probably around lunchtime mountain time, uh, the court will take a break, I'll take a break then too, grab something to eat and this afternoon at one pm mountain time. So 3 p.m.

central time, I think actually a half an hour before that. So let's say, um, 1230 mountain time, uh 2, 30 Eastern time, uh We'll start part two of this two part series of shows.

The court will, is scheduled to come back into session at the top of that hour and there'll be two more issues discussed and argued before the judge.

Um, pretty long ones. So one of them is, uh, the defendant's motion to dismiss the indictment for failure to state a criminal offense. Uh Really, I thought this had been argued already. Uh But maybe the, maybe the defense has some another argument why, what Alec Baldwin simply did is simply not a crime as a matter of law and uh the second motion two hours scheduled for this final motion.

It's the biggest block of time is uh defendant's motion to dismiss indictment with prejudice based on the state's destruction of evidence. So the destruction of evidence part is that the state sent to the FBI labs, the revolver that Alec Baldwin used to kill Helena Hutchins for testing primarily to see if the gun could be basically unintentionally discharged, discharged without the trigger being pressed. And in the course of that testing, uh the FBI lab managed to break internal parts of the gun.

That's what the defense is calling destruction of evidence. And they're asking that the judge here judge, so, um, dismiss the indictment with prejudice with prejudice means that Alec Baldwin could not be re indicted. This case would be over for Alec Baldwin.

He would be clear of all criminal liability for the killing of Helena Hutchins. Two hours allowed in that for argument. So that's what we'll do this afternoon. Uh So now, let me see, make sure I can pull up the stream for the courts.

It still says upcoming in 10 minutes. All right. So I have it ready and I'll try to answer questions uh, from the law of self defense membership during breaks. Actually, before I jump into that, let me do the formal launch of today's show.

Here we go.

Well, my little video didn't work correctly. It should have ended up looking like this, which of course you've all been watching. But more to the point today's show is brought to us, sponsored today's law of Self Defense show is sponsored by CCW Safe, longtime partner of mine. I do a lot of collaborative work with CCW Safe. Think the world of those guys.

CCW. Safe provides legal service memberships. What many people mistakenly call self-defense insurance in effect? CCW? Safe promises to cover their members legal expenses if they're involved in the use of force event.

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They fly in wherever you are, they fly in their own investigative team, experienced homicide detectives. So you have investigators working for you interviewing witnesses trying to find evidence. Otherwise, the only investigators working on the case work for the state, the prosecutor. That's not great. Uh, they also have Don West as their national trial counsel.

Uh, Attorney Don West was one of George Zimmerman's defense counsel. That was a perfect legal defense.

I didn't know Don at the time of the Zimmerman trial. Uh, but we've become good friends since then and I think the world of Don is a criminal defense attorney. Any defense with Don advising them is head and shoulders of public defense that doesn't have Don advising them that all comes as part of being ac CW safe member.

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I trust them, I trust CCW Safe to do what they say they're going to do. Now, there are other companies out there in the marketplace that purport to offer similar services. Uh Some of them are, are reasonable options, you know, CCW Safe is not gonna be the perfect fit for everybody. Everybody has different needs and budgets and so forth. Um So there are other alternatives worth considering for sure. There are also other alternatives in the marketplace that are, that are hot garbage that I couldn't recommend to my worst enemy in good faith.

Uh So be careful about what you pick, know what you're buying. I trust CCW Safe.

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And at that same URL law of self defense.com/trust, you can also get a 10% discount code for your own membership at CCW Safe right there at the bottom of the URL at the bottom of the screen law of self defense.com/trust. All right.

So where are you New Mexico still pending? I've got the window open here.

Um I will from time to time as we take breaks, address questions from the law of self defense membership. Membership. You need to be a law of self defense member because we live stream this uh to youtube, to Twitter to rumble. But most importantly to our law of self defense members as a member, only live stream with a member, only chat. And that's where I look for questions and comments to address. The good news is you can become a law of self defense member.

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But at the very least try it out for 99 cents at law self defense.com/trial. You'll be immediately emailed instructions for how to join us on the live chat, um on the member chat, which I'll take a look at right now. So apologies to the members in particular, but everybody else as well uh for being five or 10 minutes late this morning, I had some stuff come up at the last minute that I had to address, but we are here. Now, let's see.

Um Pamela Pamela asks, have you watched if you're asking me, Pamela, have you watched the Florida versus Michael Draka trial? I, I live stream the entire trial. Uh Pamela.

So yes, I watched it every, every minute of it. Um And uh and covered it live blogging, live streaming, did blog posts on it.

So, yeah, it's, that's all in our archives. Um Let's see, why can't uh Eric says you may have said this already but why can't the state just call the witnesses? The defense is trying to exclude if it's for cross exam reasons. Can't the defense just keep them on their list and not call them.

Uh Well, we're gonna hear these arguments but there's a deadline for notifying the court and opposing counsel of what your witnesses are going to be because the opposing counsel needs time to prepare uh to cross examine and impeach that witness. So after the deadline, you can't add witnesses anymore. The defense is saying that the state missed the deadline to add witnesses.

Uh The state is saying, well, no, we, we included in our witness list, a caveat that our witness list incorporates every witness listed by the defense. We're reserving the option to call them. And the defense is saying, but then you said you reserved the option to exclude them and then the deadline passed and now it's too late for us to interview these, what were their own witnesses? Of course, they did interview these witnesses.

That's why they knew they had bad things to say for their client. So this is really all just smoke and mirrors slate in hand. Uh sleight of hand by the defense, sleight of hand by the defense, uh, lots of that going on here because if we just look at the facts in the law, um, Alec Baldwin screwed in my opinion. I wrote my first analysis of this shooting the day after it happened, I wrote my first analysis, October 22nd, 2021.

And I said, unless there's some bizarre explanation, like a piece of the set collapsed and fell on Alec Baldwin, which is what made the gun discharge. So it's a genuine accident.

Unless there's something like that, this looks like involuntary manslaughter every day of the week and twice on Sunday. And I've seen nothing in the evidence since then. That does anything but reinforce my initial take on this. This is just on the law and facts of this case. This is simply involuntary manslaughter.

No question about it.

So, on the facts in the law, the defense is screwed. So there's a cliche in the law when the facts are on your side, you argue the facts, you pound the facts. When the law is on your side, you pound the law and when neither is on your side, you pound the table and the defense is doing a lot of table pounding here. And I don't blame them for that. They're, they're ethical obligation to their client is to zealously represent the interests of their client and to the greatest extent they possibly can within, within, you know, ethical boundaries.

And they're certainly doing that. I mean, I think they're, they're pushing some of these ethical boundaries. Um, but nevertheless, that's, that's their job.

If I were in their position, I'm not sure I'd be doing anything different. That doesn't mean what they're doing has legal merit is legally sound or likely to be effective. They don't have much to work with.

It's, it's one of the reasons we encourage all of you, uh, to become a member of the law of self defense community to become informed about your privilege for self defense.

Get our book Law of self-defense Principles for free, for free. Check it out on Amazon the five star review, 1500 or so reviews. Very easy to read. Most people read it in an afternoon covers most everything you need to know about your privileged use force and self defense. Maybe 80% of what you need to know. Now don't buy it on Amazon.

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We only ask you to cover the cost of shipping and handling. But if you don't know this stuff, uh you're, you don't know what you're privileged to use force in defense of yourself. Your family, your property is and you'll end up giving your lawyer bad facts. Like Alec Baldwin is giving his lawyers bad facts. And if you give your lawyer bad facts, it's a tough day for that lawyer in court.

They're stuck, they don't have a time machine. They don't get to go back in time and change what you did or change what you said. They're stuck with the facts.

You give them so you wanna give your lawyer good facts. Great way to do that right there at the bottom of the screen, get this book for free at Law of Self defense.com/free book Easy Enough Law of Self defense.com/free book. Give your lawyer good facts. If you give your lawyer good facts, you make yourself hard to convict.

I mean, that's our, that's our catchphrase here at Law of self defense, you carry a gun so you're hard to kill. Know the law. So you're hard to convict. Whoops, sorry, little disorienting I would imagine.

Um So that's the top of the hour still waiting for the new Mexico court feed folks. Um If, if you give your lawyer good facts and he can raise a robust legal defense of self defense.

The state has to disprove that beyond any reasonable doubt. That's, that's a very strong position to be in if the facts are on your side and that's largely largely within your control.

If you make good choices, good acts, good decisions, which is hard to do in the stress of a fight, but almost impossible to do if you don't even know where the legal boundaries are at all or even worse. Like I see in so many people, it's not that there is an information about self defense law out there. It's that most of what's out there is wrong is myth. It's just ignorance. I'd rather be judged by 12 than carried by six.

That that's a fool's position. First of all, those aren't the choices.

Second of all, have you seen the 12, have you seen a jury? What they look like and how they can be manipulated in the courtroom? You can't just throw yourselves on the mercy of 12 anonymous people who's, who's ignorance and interests may not be aligned with your interests. OK. So here we go.

The judge is, the judge is playing.

Here's the judge. Let's see. Here's the volume. Ok.

So, um, good morning, sorry, I'm playing a little bit. Oh, it's virtual. All right.

We're starting with the defense motion to exclude, we have just one technical issue which is Mr Bash has not been allowed into the hearing if, if he could be allowed in.

Thank you. I will be handling that motion and I will be arguing this first motion that's Leblanc and defense. So I knew that the court has obviously review the mo of the parties. I do want to very briefly though, put into the record right now for the court, the timeline again with respect to various filings that have taken place with respect to this motion because I do think they are important for the court's consideration. The first is that there was a deadline for witness list disclosure that was issued by the court and that deadline was May 6th on May 6th. Both the state and the defense filed witness lists that added new witnesses. The state added eight witnesses and the defense added nine and this was on the same day.

Now, later the same day, the state inexplicably files a motion basically claiming that the defense has untimely disclosed these nine witnesses and that we have been engaging in sandbagging by adding these nine additional witnesses again, keeping in mind that they had just added eight of their own on the same day.

Now, the defense does not reciprocate. We don't file any motions uh claiming that they've been sandbagging or that they've done anything improper because both parties have in fact complied with the court's order and filed their motions by May 6th. Now on May 21st, we respond and we point out the absurdity of the state's position and of their request on May 31st which is a Friday. The state files a reply and in their reply, they are still calling for exclusion of our nine witnesses who we listed on the deadline of May 6th.

Now at 6:52 p.m. on May 31st, that Friday, the state also files a notice of completion of briefing which is basically informing the court that the matter is ready to be heard.

There's no withdrawal of the motion. They are still maintaining their position and their request that our nine witnesses should be excluded, the ones that we filed on, uh May 9th. Now, at this point, the defense is aware that we have eight days that were scheduled for trial and with eight

days scheduled for trial, the state at this point has listed nearly 50 witnesses and the defense had 26 that were listed on our list as well. Now, we know that there's no way that we could get through 76 witnesses in eight days. That's, it's not possible.

And so trial is fast approaching. And so the defense recognizes we need to start preparing for trial.

We need to start putting these resources where they need to go and be working toward trial rather than investigation. We have to switch gears.

So acting in good faith and knowing the state's position with these motions that we've now filed and briefed over the course of the past month. Um, the defense reviews the case and then makes a strategic decision that we can cut down our witness list significantly and we proceed to file on Sunday, which was June 2nd, a written notice that we are withdrawing nearly half of our witness list. And so we consent to an exclusion of five of the nine witnesses that the state has requested um, be excluded through their motion.

And so we send a courtesy copy to the state of our notice um of our uh intent to withdraw um those witnesses. And we also send uh a new witness list to the state less than three hours after we sent those copies to the state after the state.

Now has this insight into defense strategy and while the state had just hours before still been standing on their motion, that our witnesses should be excluded.

The state turns around and less than three hours later files an amended witness list, adding witnesses that they still have a pending motion to exclude that motion is still pending. And yet they file an amended witness list, adding witnesses that they are still seeking to exclude for their motion the next morning. Then the state files a notice that they're withdrawing their motion. All of a sudden, there's no prejudice. All is.

Well, all of these things that the state had uh declared to the court that they would suffer as prejudice by the defense's disclosure of these witnesses on May 6th is now no more. And in fact, they want to go ahead and add uh some of the witnesses to their own witness list.

So we find ourselves your honor in the absurd position where the state has sought exclusion of witnesses by motion. And this is not through discussion. This wasn't correspondence through emails, through phone conversations where the state says we think you should pull these witnesses. This is through motion practice.

They have represented their position to the court and they've represented their position to the defense and they've notified the court this matter is now ready to be heard because it is completely briefed. And yet within mere hours of getting a look at the defense strategy, the state tries to walk back their motion. Now, obviously, there are rules of criminal procedure that are in place.

There are criminal procedure rules that govern time for filing, that govern various procedures throughout this process. And these rules presume that the parties will operate in good faith. They assume in particular that the prosecutors will follow their ethical duty, which is to seek justice rather than to simply secure a conviction at all costs. But however, there are times when rules are not sufficient where perhaps the party is manipulating the court system.

And in those times, the court has to look to other doctrines in order to ensure the integrity of the judicial system. And so we look for evidence of manipulation in the court system and we can do that by looking at the first filing that the state had, um, where they moved to exclude the witnesses in this case.

And in their motion to exclude again, which was filed on May 6th the same day that uh both parties filed their, uh additional witness list. The state lists out in details, the prejudice that they will suffer. They say you, even though we filed by the deadline, they point out to the court, there's only eight weeks, we're only eight weeks away from trial.

The defense by adding these additional witnesses, they don't have time to investigate this case. And so the defense is uh engaging in improper tactic and we're sandbagging the state. The state is prejudiced. These are their words, these are their terms.

They also note um in their motion and make really what are patently false statements. And what they say is that the state has uh at this point by May 6th, has made all of its witnesses available to the defense for pretrial interviews.

Um That is false. That is not correct. In fact, we had uh the state's expert witnesses. Um Multiple expert witnesses were actually scheduled to be interviewed after May 6th, um and were subsequently interviewed into late May. Um and then even more recently, um into June based on some new disclosures that have been had.

And so that we had not interviewed all of the state's witnesses despite the representation in the state's motion.

In addition, the state also uh told the court and asserted that pursuant to rule 5501, the state not only disclosed its witnesses but also has provided the defense with all witness statements and experts reports as well as underlying data and a summary of proposed expert opinions that is also false your honor because and the court will see through different motions that are going to be presented before the court. Um Some of which will come before the court today, um and others which uh which we will be sending it to the court later. Um In fact, that is not true.

We had not received numerous uh expert witness supplemental reports. Um Those had been withheld for uh from us including one that was particularly exculpatory um by Lucian Haig um that had not been provided to the defense.

Um As of the May 6th filing of this motion, there were also statements by the state's other expert Brian Carpenter that had not been provided to the defense and to the state. Um We have a, as of this day, we have made numerous requests of the state that they provide these statements that have been redacted through an I pr a request that we had done um to try to uh get a hold of different statements from various um witness and things like that, communications with the state. And so we are in possession of some emails, for example, e A correspondence that does indicate that there are opinions um of the state's witness, Brian Carpenter.

Um And yet those have been provided to us in a redacted format through I pr so we do not have the ability to see the contents of these statements, but we can see that they exist. So what's going on here right now? She's just gone off the rails because they had an actual complaint here. And now she's saying not only that your honor, but they're doing all the, the state's doing all these other things that we don't like.

So let me, let me rewind it back to what's supposed to be the actual argument here.

The actual argument is that the uh the state and the defense on the last day that they were permitted to notify opposing counsel of witnesses that they wanted on their witness list. Uh The defense added eight or nine witnesses. Um And of course, you do this on, you know, Friday afternoon of the last day, the deadline to notify uh for strategic purposes. Then after the defense interviewed some of these eight or nine witnesses, they, they discovered that all five of them when they're cross examined, when they're interviewed by the state, they're going to reveal information that's harmful to our client. They didn't like that.

Now, when they did file these witnesses on the last day, on the deadline, the state immediately filed a motion with the court.

We reserve the right to exclude these witnesses. We feel we've been sandbagged because they were added at the last minute. The defense has known about these witnesses for months. This is, this was done at the last minute for strategic purposes in a way that's unfair to us.

Now, that's just a motion that's a request from the state to the court to say, hey, we'd like to reserve the right to make this argument to the court and maybe get these witnesses excluded if the court agrees, that would be normal. It's like if you had a, you know, you had a bunch of shipments coming to your home and their furniture, you're having a bunch of furniture shipped to your home. And you know, sometimes when you open up those boxes, the furniture is broken inside. So you gotta open up the box and inspect it.

But in this case, they deliver it on a Friday afternoon and you're catching a flight for a vacation with your family. So you can't open them up right. Then you don't have time, you know, they've been delivered, you've been notified you're there when they bring the boxes, but you don't have time to open up the boxes and see if there's anything objectionable.

So instead of signing the delivery receipt, the packing slip and saying everything is ok. This is fine. You sign it, you say, but I reserve the right to inspect these packages when I get back from my trip to determine if anything is broken. That's essentially what the state did here.

The defense said, hey, last minute nine more witnesses, we're just notifying you now for the first time. The state said, oh, we're filing a motion reserving our right to ask the court to exclude these witnesses because we believe we were sandbagged.

Of course, they put it in more technical legal terms. It doesn't mean the witnesses have to be excluded. The state could, you know, you could open up those boxes and find the furnitures undamaged and then you say, all right, that's fine. We'll keep the furniture or you open up the boxes and you find the furniture is damaged and you say no, we reserve the right to inspect afterwards.

We're shipping this broken furniture back.

That was the state's position. Well, what happened was the state filed that motion reserving the right to exclude these last minute and witnesses. And after that, the defense realized that half of these last minute and witnesses were gonna be damaging to the defense.

They were like, oh crap. You know what we're gonna take. Uh We're gonna pretend we're gonna act like we're agreeing with the state out of the kindness of our hearts for the efficiency of the trial process.

Uh We're going to say, you know what your honor.

Uh That's fine. Uh We understand the state has an objection to some of our, to all those last minute witnesses. We're gonna take five of them off, off the calendar, off the list of course, it's the five that are damaging to the defense and they're pretending they're doing it as a favor to the court and a favor to the prosecution, which is obviously not the case while the prosecution sees them do this. And this is before the court has made a decision on the motion to exclude before the court has made the decision that these witnesses are off the list.

It's still pending this motion. The state sees the defense withdrawing their own, their own witnesses. And there's only one interpretation to make of that, right? And that is that, well, the only reason the defense would, would draw its own witnesses.

Maybe they're doing it out of the kindness of their heart or maybe they're doing it because they realize these witnesses are damaging. So the state says, no, no, we, we want those witnesses.

Now we want them, we withdraw our motion to exclude with respect to those witnesses. That's what's being argued now.

And now the defense is saying your honor, that's not fair. That's not fair. That's what's really going on. Now, there are many, many of these documents and we don't know fully what might be.

Oh, now, now she's transitioned to a completely different topic. It's not even in the motion now instead of talking about. And this is just because I probably she recognizes she doesn't have a strong argument on the, uh, if she focuses on the legal question here, should these witnesses be excluded or not over the state's objections.

She probably feels she's gonna lose. So she's throwing in a lot of other stuff and your honor.

It's almost like a sorry ladies but gentlemen, if you've ever had an argument with your wife and maybe she's mad about X and so you start arguing about X and it turns out you have a pretty good defense. You have a pretty good explanation for why you didn't take the garbage out right away. Like your leg was on fire.

You had to put the fire on your leg out first and then you were gonna take out the garbage.

Sometimes, sometimes a wife might see she's losing in that argument act. So she just transitions to why and, and then to Z and then starts at the top of the list with ABC and D that happened 15 years ago. I'm sure many of the husbands out there have had this experience. That's what Heather Leblanc is doing here. She's like, and, and by the way, your honor.

But besides this whole witness thing, the state's been mean to us in other ways, they haven't given us this or haven't given us that maybe there's merit to those arguments. But then they should be separate motions, not, not part of the motion, uh to exclude witnesses, be contained within these various email, communications and correspondences between the state and their expert witness. And we've asked the state in compliance with their affirmative duty to provide statements of their witnesses and statements of their experts and opinions of their experts to the defense.

We've asked them to provide, I hear a comment, see a comment here from a Glen, I guess this is a youtube comment which normally I don't read. But this one is funny. He says, keep in mind that Andrews biased as hell and there is nobody to challenge his spin.

Were defense counsel to have a chance to rebut. You would not be as impressed Glenn.

This is defense counsel, I'm showing you defense counsel this is their argument.

They're making it unredacted copies and the response has been, you know, you have to go ahead and identify for us which ones it is, you need unredacted and then we'll take a look at it. That's not how this rule works. Your honor. The rule works that the state has a duty. Uh They have a duty to go and look for and to exercise reasonable diligence to uncover uh statements

and opinions of witnesses and expert witnesses. And they have an affirmative duty to provide those to the defense.

And yet they're putting that burden.

Uh again on the defense, we have also had disclosed to us over 150,000 pages of other documents we had as late as May 23rd audio recordings um that were taken by the state's investigator Connor Rice of uh various witnesses whom the state had listed. Um in its uh on its witness list. None of this has anything to do with the defendant's expedited motion to exclude witnesses that we had never been provided. Um And we only received them on May 23rd. Um And, and the list goes on your honor.

It includes, then the state has now filed. Um, as the court is aware, is pursuing use immunity for Hannah Gutierrez.

Read this use immunity is next is next, that's gonna be argued in a separate motion. Next, it's not part of this motion. The fact that she can focus on the legal core of this motion. Defendant's expedited motion for use immunity that she's bringing in all this ancillary stuff that either is not on the docket for discussion today at all would require completely different motions and argument or that she's bringing into the first half hour of the day, motions and arguments that are scheduled to be made later in the day tells you all you need to know about her confidence in her core argument about excluding the witnesses and in accordance with that they have now provided over 361 recordings uh for our review um based on uh uh statements that were made by MS Gutierrez Reed now. So this is another funny thing. The, the defense complains about all these like recordings of things that Hannah Guterres Reed said most of these recordings were said like during her investigation, her interrogation by police in 2021 2.5 years ago, this, the defense has been aware of these.

So they're acting like they're ambushed, they were not ambushed.

The list goes on. There's, there's more, there's more that, that has been disclosed and that continues to come. But these statements that the, that the stake has made in their motion as officers of the court are not true.

These are factually not true, your honor. This state's a big fat liar, which they might be, but that's a separate motion. And so we are prejudiced and this is why the doctrine of judicial estoppel would come into play because this court needs to protect the integrity of the judicial process and prevent manipulation of the court system.

And so when the court looks at judicial estoppel, it's a three pronged test. The first two of which are part of uh the main test if you will and the third while not necessary um is actually uh a part of the test that indicates that judicial estoppel is even more appropriate if that third prong is met.

And so I'll go through those with the court. Now, the first is that the party against, I see another youtube comment. Sorry folks.

It's normally I don't address the youtube comments, but when they're exceptionally good, I will, Texas Dave says Andrew, would you defend Baldwin in court? Don't think there's much to defend of this dirt bag. Thanks for bringing this to us, sir.

Much respect. Of course, I would defend Alec Baldwin in court. That's the job of criminal defense counsel. You as a criminal defense attorney, you don't have a thick client list of innocent clients.

Folks, most of your clients are criminals.

The question is whether is a criminal defense attorney willing to defend a criminal? The question is, is a criminal defense attorney willing to compel the state to do its job and prove that defendant guilty beyond a reasonable doubt, I'm more than happy to compel the state to do that for any client. Even if I don't personally like the client personal, like has nothing to do with it, whom the doctrine is to be used must have successfully assumed a position during the course of litigation. The second is that the first position must be necessarily inconsistent with the position the party later takes um in the proceedings.

And then finally, while not an absolute requirement, judicial estoppel will be especially applicable when the party's change of position prejudices a party who had acquiesced in the former position. So, ok, so nothing in their motion to exclude witnesses that I recall uh made any reference to judicial estoppel, but estoppel is such an odd word.

I feel like I should address it. So estoppel basically means that opposing counsel took one position and you relied on that position and then they changed their mind and your reliance and they're changing in their mind unfairly prejudices you and AAA normal word scenario, illustrating this might be you work for a company. The company requires you to request vacation time months ahead. Right? Not uncommon in big companies.

So in the winter, you request two weeks off for vacation in the summer and the company says, yes, we will put that on the calendar.

We're granting you that two weeks vacation in the summer months from now and in the interval, you would spend a lot of money and resources planning and scheduling and reserving that vacation. Say you're going to, to Disney World in Florida and you're getting the uh the VIP tour. So it's 10 grand just for the tour and the flights and all the other stuff that's going on. So you spend a lot of money in reliance on the companies informing you that they're going to allocate those two weeks of vacation to you.

And then a month before your vacation, long after any period to get a refund on any of these expenses for your vacation. The company says, you know what? We change our mind. You can't have that vacation after all.

That would be a circumstance where you could argue, would argue in a legal sense, estoppel uh Essentially.

No, no, I asked you and you told me I could take the vacation and now I relied on that incurred a lot of expenses and now you're reversing that decision, you should be stopped from reversing that position that's what estoppel means here. They're essentially saying that the, the, the the court should exercise estoppel because we had witnesses on our list. The state said we reserved the right to exclude those witnesses. So we agreed to withdraw the witnesses that were harmful to us.

Um And in doing that, we no longer have time to finish preparing those witnesses. And therefore, the state should be stopped from wanting those witnesses from withdrawing its motion to exclude those witnesses.

Detrimental reliance is another good way of putting the estoppel concept. And so we'll start with the first prong with respect to the first prong your honor. The state has successfully assumed a position. The state uh took a position in motion that witnesses should be excluded.

And the defense after full briefing uh of the case and in reliance on that position, the defense then conceded um the states uh the relief that the state had sought as to five of the nine witnesses, at least we're back on point.

And these are the five of the nine witnesses the defense had realized after adding them to the witness list on the last day of the deadline day, these five were gonna be harmful to the defense that the state was looking to have excluded. So the state was successful in its motion. The state tries to indicate that um that in fact, a party must have already had the matter adjudicated by the court.

In order for there to be a successful position that was taken by the court and I'm gonna go for the state's motion. And so what the state says is that, is that this must have already been adjudicated by the court in some way through some order by the court.

There have been no arguments is what the state says. The state says. The record in this case is crystal clear. There were never any hearings or other judicial proceedings in which the state's initial motion to exclude certain defenses was adjudicated by the court.

And therefore, um their position is that, that means that there was no um that they, that we don't meet the first prong. However, that's incorrect your honor and if the court will look at the case that we cited, um And it's Khan, which is a 2024 I'll mention that once more that we, we do

address all comments and questions from our law, self-defense members for free in the member chat if you're on youtube and you'd like a question or comment mentioned.

If it's exceptionally good, I might do it for free if it's just repetitive or tiresome like Glenn has become in the youtube channel. Um I'll address questions and comments in youtube. I promised to do them if they're at least a $10 Super Chat.

So Glenn, if, if you want me to address any of your tiresome comments, they need to be $10 Super Chats.

And if anyone else does a $10 Super Chat, I'll address their comments as well or case. Um The site is 2024 N MC A 032. And when we look at this case in paragraph 14, the court notes that the respondent in that case did not successfully argue and therefore assume this position in a motion or at hearing. So the use of the word or clearly demonstrates that a party can assume a position either by its argument through motion or also by its argument um at a hearing.

So it's either or it doesn't have to be at a hearing. It can also take a position through argument in emotion.

Sorry, folks, I do want to address this. So I guess we have some new law self defense members joining, which is, which is great. You can become a new law, self defense member right there for 99 cents.

Law of self defense.com/ninety nine cents. But someone's asking how do they get to the live stream from the member dashboard. So when you go to Law of Self defense.com, in fact, let me share it like.

So this is what you'll see. Uh You'll need to log in as a new member.

You'll have your login credentials emailed to you. When you become a member, you wanna go to dashboard on the left here, upper left and then depending on most of you will have become a standard member. So you click standard membership, scroll down, it'll say live show and chat and you'll see the live stream there and the chat below. So now we're, we're, we're piercing the fourth wall here and that's the chat.

So that's what you'll want to do there.

All right. Let me pull up the, oh, where'd I go with the live stream? So, I don't know why this, the stream is acting weird for me today. It's not doing the full screen correctly. Mhm. Ok.

Let's do it like this. And this is further solidified through paragraph 16 of the same case in paragraph 16, the court continues and states that the respondent could not be considered to have successfully assumed a position about the nature of the West track until filing the motion for partial summary judgment.

It doesn't say until argument of the motion, it says that upon filing of the motion for partial summary judgment, that is the moment at which the respondent could be considered to have successfully assumed a position.

And that is what the state did in this case, they assumed a position in the motion that they filed both the primary motion and then also their responsive briefing. They assumed a motion or I'm sorry, they assumed a position and they successfully assumed that position because the relief that they thought was granted uh effectively by the defense consent to that relief. The second prong your honor um has and um and, and I will actually point out the cases that the, that the state cited for this principle. So that was the one that the defense cited, the state cited three cases in support of their um proposal that uh that emotion has to be argued before the court. And there has to be an order in order for there to be a, a successful assumption of a position.

They cite um o'brien, they cite the Gabriel V Hill case and then they cite a 2014 unpublished opinion which is um nonpresidential. So I'll go over the two cases um that are actually published case law um for o'brien in this case, this is a case where the court did apply judicial estoppel and there happened, there did happen to be an order that was entered by the court. It was a pretrial order.

Um but a mere finding merely finding a case where estoppel was applied and where the court had entered an order does not indicate that the first prong can only be met where the court has entered an order and that is not the holding of the case.

Um It just so happened to be that in that case, there was an order that had been entered by the court. Um and therefore that met that part of the prong in the either or so either in a motion or at a hearing. And so in this case, there was a hearing, by the way, this is very, this part is very fair here. This is why criminal courts are an adversarial process.

The state cited some appellate court decision, case law as authoritative law for its position and the defense gets to distinguish that decision uh both in terms of what the claim, what the state claims the decision actually means, which can be different from whatever procedure was followed. Um As well as distinguished from the facts of this particular case, New Mexico versus Baldwin. So each side will find things like case law that they believe supports its position, build it into its arguments.

And then the other party, opposing counsel gets to attack the use of that case. And thi this is perfectly appropriate exactly what she should be doing here hearing um that was appropriate, but that does not say um anything about uh uh about the fact that it one can also take a position through emotion. The Gabriel V Hill case, um This one doesn't even deal with judicial estoppel.

It actually involved the doctrine of collateral estoppel, which is a different doctrine. So collateral estoppel has a different test than judicial estoppel.

And the purpose of collateral estoppel is to promote judicial efficiency and consistency. And the goal is basically to keep parties from relitigating issues from a previous suit with judicial estoppel. We're talking about a purpose that has to do with protecting the integrity of the judicial process by providing. So to clarify here, my editors get mad when I leave myself small in the corner like that.

So we talked about judicial estoppel before, right? The someone takes one position, you rely on that position and then they change their mind and that damages you harms you in some way.

So you argue they should not be permitted to change their mind. That's what is being argued here. Collateral estoppel is a little different. Collateral estoppel is where um um imagine for example that in the Hannah Guterres case, the prosecutors had argued, uh, that the armorer was the one holding the gun and fired the bullet into Helena Hutchins that the gun was not in Alec Baldwin's hand. It was in Hannah Guterres hand and they convict Hanna Guterres of involuntary manslaughter on the fact basis that she was the one holding and recklessly manipulating the gun. She was the one who didn't check that the gun was loaded, pointed it directly at Helena Hutchins manipulated the hammer trigger and recklessly discharged that bullet fatally into Helena Hutchins committing involuntary manslaughter and they secured a conviction of Hannah Guterres on that basis. Well, only one person could have been holding the gun when it went off and killed Hannah Guterres.

If the prosecutor argued it was Hannah Guterres secured her conviction.

Collateral Estoppel would, would prevent them from then also claiming that the gun was actually in Alec Baldwin's hand. It was he who fired the gun. Uh, but collateral estoppel obviously is not at play here. Hannah Guterres was convicted of involuntary manslaughter for recklessness, independent of the manipulation of the gun when it discharged into Helena Hutchins preventing the parties from. And this is quotes from the various cases from playing fast and loose with the court and ensuring that the party does not manipulate the judicial system. So in light of the fact that there is a 2024 case, which is the case that the defense cited that precisely states that a party can assume a position pursuant to the first prong through motion alone.

The question again is whether or not they were successful and we submit to the court that they were now moving on to the second prong. The first, uh the second prong says that the first position is necessarily inconsistent with the position that they take later.

Clearly. That is the case clearly that has been met. The state was first um saying that there was prejudice by the um inclusion of these additional witnesses on this, the defense witness list. The state's position was that those witnesses should be excluded.

And now they have taken the exact opposite position saying these witnesses should be able to be called by the state and there is no prejudice by their inclusion.

Now, even though only the two prongs are actually required, the third prong again indicates that if the party's change of position prejudices, the party who had acquiesced in the former position, then judicial estoppel will be especially applicable and that is the case here. So the defense relied on the state's motion which the state had told the court on May 31st and their notice of completion of briefing was fully briefed and was ready to be heard. And in recognition of that fact and recognizing that we are scheduled for trial for eight days in an attempt to pare down our witness list substantially. We removed again, almost half of the witnesses from our witness list revealing significant defense strategy and we also informed our witnesses. Um There were some witnesses who were scheduled to be interviewed um the following day.

And then a couple of days later, we informed those witnesses that they were released from their subpoenas. Um and we uh and we did in fact release them from the subpoenas and we told them that those uh interviews would be canceled by the way, the state.

So there's a deadline for these kinds of interviews just like there's a deadline for the adding people to the witness list.

The state has said that uh hey, listen, we're, we're happy to waive the deadline for the interview. So if you need more time for the interviews, you, you've got it, which rather neuters, this particular complaint, uh we ran out of time to interview people before the deadline. Um We sent again courtesy copies of our notice to the state along with our amended witness list. And then that's when within less than three hours after um seeing defense strategy, the state changes position.

Now the state proposes that really, they can just cure any prejudice to the defense by extending deadlines, like I said, but that doesn't cure our prejudice for a variety of reasons primarily.

Um Because you cannot cure the fact that we have already revealed defense strategy and reliance on the state's position and the state has not walked that back. We cannot cure that. Um In addition, we're in a time crunch at this point, your honor and we do not have further time available. The state um In their motion on May 6th, noted that uh that they were prejudiced by the fact that there was only uh eight weeks prior to trial. We are now in a position where we only have two prior to trial.

We did not receive um significant information from the state previously. And the reason that that is relevant here in particular is because time is a finite resource. The recordings alone that were disclosed related to Hannah Gutierrez read are so significant and substantial that if we take an average of the time that it would take to listen to each of the calls and we dedicated one whole person doing nothing else, taking no breaks for a full eight hour day.

It would take that person approximately 15 business days to listen to the recordings, but we don't have 15 business days.

We have 10 and not only that, we also then have to look at the potential of having to interview Miss Gutierrez read. So time at this point, your honor is a finite resource and the state is playing games to exploit that resource and to take time away from the defense where we should be being where we should be spending our time in trial preparation. Instead, we are having to deal with the states constantly changing positions with their changing disclosures with the new things that they're adding. And it's, it's fundamentally unfair.

And as the state notes, in the state's own words, um, calculated sandbagging is not appropriate. And what they say in their own motion is that they say that they say this kind of manipulation of the court should not be permitted. And we agree. And so we are asking the court to therefore exclude um, the witnesses and to grant the defense motion.

All right, Carrie Morsey or the new prosecutor who's going to take the state.

I have a couple of questions before I hear from the state. Um This first you talked about that you had to, that you decided by the way, previous oral arguments before this judge on cases where I thought the, uh the defense was really making a specious argument. And the last one I think we covered was uh the defense motion to dismiss the indictment for failure to state a criminal offense. Uh The judge was really hard in asking questions of the state.

Uh based on that, that oral argument, I thought the judge might very well rule for the defense and dismiss the indictment. Uh, but she didn't, when she actually wrote her order, it was, uh, the order was, uh, consistent with the state's arguments, not the defense arguments.

So this judge can be pretty tough in oral arguments and, and arguably a little bit misleading in terms of uh our expectation of how she might ultimately come down. That um you were going to limit your witness list, cut it down because um you had to switch gears for trial preparation, the time for investigation, um um was uh superseded by preparation. Uh uh If I, if I'm misstating that, tell me right now. No. Yeah, that's correct.

That is, that is a big part of the consideration as well, which is why we were assessing our case in that moment to determine what needed to be done.

And so you said that you made the strategic uh decision and that, um but I'm, I'm not clear and, and that they know what your strategic decision is. Is it anything more than you eliminated a witness? No, your honor. We did not include any additional um dialogue with the court or information in the pleadings.

But again, um we had pared down our witness list to almost half of what it was. And so I think that gives the state a pretty good idea of what we're going to be doing with the case. No, does it? Ok. Um, and so, uh, then you're talking about this sort of bait and switch is what, what you're saying, where on May 6th, uh, they had a problem with your witnesses and then on June 2nd you took, um, certain ones off and then on June 2nd, uh, they, uh, added, uh, three of the witnesses that you took off and, um, I'm not quite sure how that short time frame.

Uh I, I know you're arguing a little more than short time frame, but that's quite a short time frame, right? A short time frame for what I'm sorry, the court would have for them to have added the three witnesses that you deleted. Correct.

Yes, it was a quick turnaround. That is correct within.

And how do you explain that they have always added at the end, any witnesses called by the uh defense and that you had had these individuals on that's correct your honor. And so this is so it's a different position I think than we would be in if, let's say the state had not filed a motion to exclude. That's the part that changes. I think the analysis in this case because at any point, of course, uh one party or another can remove witnesses from their witness list. We could not add any more witnesses based on the court's order, but we could remove witnesses from our lists and there was the catch all of you know, any witnesses who were listed by the defense or by the state.

And that is correct.

However, what's different about this particular situation than the typical instance in which a party may just decide to go ahead and remove witnesses is that we did so in advance of the uh final trial, witness list, for example, that this court has, which I believe is Monday. Um And so we did so in advance of that, in order to remove, to say, ok, we're not even gonna finish doing these other witnesses. We know where our case is gonna go. We're pulling these people off and this is what we're going to do.

And we did that in reliance on the briefing that was filed by the state. And so it's a bit of a different position because the state had already effectively indicated to the defense as well that they did not intend to call those witnesses by moving to exclude them. You can't move to exclude witnesses from trial for the defense, but then be keeping them for the state.

That's not what they were saying in their motion. So what they were saying was these witnesses should not be called at trial. And so they're saying that they also will not call those witnesses. We then in reliance said, OK, fine, we agree to not call those witnesses.

And so this is a different position than one party unilaterally just removing witnesses from their witnesses because it was done in reliance on the state's briefing and on their motions. So the prejudices.

Um What, so the question is that you went into this whole thing that is not in your, you know, it's more of your Brady Violation motion. So what's the prejudice? So the prejudice at this point, your honor is we already had canceled uh and released witnesses from subpoenas. So they were no longer valid subpoenas since we had already informed the witnesses that they no longer had to be there.

Um The witnesses, even though some of them had already been interviewed. Um The the problem is, and again, we don't want to go through an analysis of what each of the witnesses would be because we're not going to reveal further strategy to the state than we already have.

And so we're not going to do an analysis piece by piece, you know, to tell them what the import is um or is not of each of the witnesses, but suffice it to say that we did an analysis of these cases as a group as a whole could be released and could be removed from our witness list together. If only some of them are now coming back, then that can again impact whether or not there need to be other witnesses who will still remain uh on the list whom we have not interviewed.

And the state says, you know, we can just extend the deadline, right? We can extend the deadline to take care of that issue. That's the state's proposal. But again, we have a finite amount of time and we are in full trial prep mode, um, at this point.

And so that's the prejudice your honor that you can't interview three more witnesses because you might have to interview some additional ones.

And, and that's the thing is we made, we made a, we made a decision and a call based on whether or not we might need additional witnesses. That's correct on that.

But at this point, we don't have the ability to do that. And so that's the prejudice. So the prejudice is that you're preparing for trial and you can't do these pretrial interviews, you need to articulate it for me. So that is certainly a part of the prejudice.

And so it's, it's multifaceted. So that is a part of the prejudice. The other part of the prejudice that is specifically related to the witnesses is in this is the judge just taking a fan and blowing away the smoke from all this argument.

Getting down to the g the nugget of what the defense argument is supposed to be.

And it's not very strong leasing or um removing nearly half of our uh witness list. We also, uh again, some of these witnesses are interconnected and so now we have removed uh 11 witnesses and the state is now adding back piecemeal, you know, which witnesses they want to put on and it happens to be some of the ones that they had moved to exclude. Those are the ones who they've, uh, listed as, as being added.

And so the prejudice is that it does impact, um, our case in our presentation. Um, and then your judicial estoppel is talking about fast and loose. But you're also that, you know, they took one position and then they took another position but you're talking about all in the same.

I don't know, what is it? 48 hour period. Um I mean, what you, they, they, they added them and then did the withdrawal and, and, and, and you're talking about that constituting judicial stoppel. Yes, your honor because it wasn't just that one moment either.

It was the fact that this had been briefed over the course of a month as well. And the state had indicated that the briefing was completed and these and these witnesses, um in particular, they were very difficult for us to serve as well. We don't know that we would be able to get them back. We had difficulty serving them through our process servers and they were hard to find.

And then there was also one who was released who was actually an out of state subpoena witness.

Um And those also take additional time that we don't have to try. Appreciate it. Thank you. I don't know who's going to be arguing. It's me your honor. Thank you.

May it please your honor. The case that actually governs the analysis is State versus Harper and in State versus Harper the court.

So are Linda Johnson a late addition to the special prosecution team? So Carrie Morrissey was a, a career defense attorney. Here we go. So special prosecutor Kerry Morsey, career defense attorney appointed as a special prosecutor to prosecute the rust cases.

Uh for various reasons, the elected prosecutor in the district didn't want to do it for reasons that don't really matter. Kerri Morrisey was uh, was appointed after the, well, it doesn't matter.

She was appointed special prosecutor for these cases. She prosecuted Hannah Guterres.

Uh She worked out the um appeal deal for uh first assistant director David Halls. Uh and now she's prosecuting Alec Baldwin, but she did begin to run into a little what pers seemed to me some difficulty in dealing with the Alec Baldwin uh defense team.

Uh These lawyers are far better than the Hannah Guterres defense lawyer who was working by himself. Uh Alec Baldwin retained a bunch of uh high level Manhattan lawyers. Uh Their, uh their firm is Emmanuel Quinn. It's one of the top 50 law firms in the world.

Um, the top guys here, Alex Spiro and uh I forget the second gentleman's name, both partners. They generally do commercial litigation, but they'll be, they'll be super smart guys. No question about it.

And they've also brought on a team of including Heather Leblanc who we've just heard arguing a team of seven or eight other attorneys all outside of New Mexico. They have 11 local attorney who's, um, the local New Mexico attorney.

Maybe that is Heather Leblanc is the local attorney. Um, the others are all admitted pro hag vicci. They're not admitted to practice law generally in New Mexico, they're mostly New York lawyers and a few from other states branch offices of Emanuel Quinn. Uh, they've been

admitted to, to practice for the purposes of this trial by the trial judge under the umbrella of the local New Mexico defense attorney.

And, uh, and they've been filing lots of motions making lots of creative, very creative, even if I think many of them are specious but many creative defense arguments. And it wasn't hard to imagine that Kerrie Morrisey, special prosecutor, Kerrie Morsey was getting overwhelmed. So, uh after the Hannah Guitarist trial, but before obviously, now she brought on Linda Johnson, this woman on the screen here who is not a career defense attorney who suddenly finds herself as a prosecutor.

She's a career prosecutor and she's part of the team here and she's gonna make now the counter argument on behalf of the state as to why these witnesses initially offered by the defense and then abruptly withdrawn, um, should not be, uh, should be allowed to testify at the trial and should not be excluded. So that's the Linda Johnson story. This is the first time I've seen her argue.

Uh So this will be interesting. The big question of course is, does she own a hairbrush? It doesn't look like it. We'll see.

Yeah, pro HAC vy is a process by which an out of state attorney can be admitted to, um, act as counsel in a particular proceeding with the permission of the judge.

Generally, you also need a local lawyer there on the team, uh, who's familiar with local rules and procedures and so forth. It's, it's not, I wouldn't say it's common, uh, but it's not, it's not super uncommon either. The New Mexico Supreme Court at 211, New Mexico Supreme Court 44 paragraph two noted that exclusion of witnesses requires an intentional violation of a court order, prejudice to the opposing party and consideration of less severe sanctions. And when considering sanctions, prejudice to the opposing party is a central consideration. And in Harper at paragraph 19, the uh Supreme Court noted that even when a party has acted with a high degree of culpability, the severe sanctions of dismissal or exclusion of key witnesses are only proper when the opposing party has suffered tangible prejudice.

And in this case, your honor first, I would submit to the court that prosecutorial discretion allows the prosecution to make decisions with regard to the evidence. It plans to present at trial unless that faith is demonstrated, those decisions are generally not subject to review.

I would submit to the court that in this case what happened? Your honor is that on May 6th, there were a number of witnesses disclosed because that was the pretrial motions deadline. The state had no idea the defense was planning to call these witnesses. So we filed this motion but then these witnesses were set for pretrial interviews.

The ones that the defense now seeks to exclude these witnesses were interviewed, these witnesses.

Uh, then the state investigated the statements of these witnesses and determined over a period of that weekend that it would be, uh there would be no prejudice to the state. So we went ahead and withdrew the motion.

And so what's important for the court to know your honor is that Mrs uh Zack Sneezy, which is a one of the witnesses that the defense fortuitously decided to, to withdraw actually was interviewed the week before uh the last week in May. And during his interview, he revealed that he was standing very close to Mr Ball when, when he shot and killed Helena Hutchins. And Mr Sneeze be specifically said he saw Mr Baldwin pull the trigger.

And as you know, the defense position has always been that he didn't pull the trigger.

Well, now there's an eyewitness who actually says he saw him pull the trigger and he said this during his pretrial interview, the, the the state conducted additional investigation and determined that it would then withdraw its objection or opposition to these witnesses. There was no bait and switch there was no bad faith. And what's important? Your honor is that these were so bad faith might be if the state changed its position. What happened? Ok. Sorry, folks, I got confused.

I have too many tabs open, bad faith might be where the state changed its position in the absence of any new information for strategic purposes or to ambush the defense or something along those lines here.

The state saying, yeah, we changed our position because we got new information. We learned from his interview that this witness is prepared to testify that he saw Alec Baldwin pressed the trigger when Baldwin discharged that bullet into Helena Hutchins. And the defense has been arguing throughout that the gun went off by itself. Alec Baldwin has said repeatedly, he never touched the trigger that's relevant to an issue in dispute in this case. So that's not bad faith, that's good faith defense witnesses. It's not like these were state witnesses that were not made available for pretrial interviews.

These were defense witnesses, presumably the defense had spoken to them, had investigated what they were going to say and they disclosed them on their witness list. So for them to now argue prejudices, I would respectfully submit, disingenuous because they are seeking to exclude and claiming prejudice because they withdrew and didn't have time to set up pretrial interviews of their own witnesses.

Well, if we're gonna list witnesses on our witness list, we first interview them, find out what they, they have to say and then we list them on our witness list. If we believe their information or the evidence they're going to present is relevant. On May 6th of this year, the state filed its witness list. The 45th witness as the court noted is any witness disclosed by defense called as a witness by the defense or listed on the defense witness list.

The fact that the state then listed the witnesses, the defense sought to withdraw on its witness list. It does not result in a violation of the rule because we did as the court pointed out, the 45th witness was any witness listed or disclosed by the defense, your honor with regard to the prejudice.

Because before the court can impose the severe sanction of exclusion, the court has to find that there is prejudice at paragraph 19 through 21 of the Harper decision, the court specifically stated and I quote 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 preparation for trial. These were defense witnesses and that bears repeating. These are not state witnesses that the state suddenly disclosed a few weeks before trial. These were their own witnesses that the state put on the witness list on June 2nd. Therefore, your honor under Harper, I would submit to the court that there has been no intentional violation of the court's order.

In fact, there has been no violation of the court's order and therefore the extreme sanction of exclusion is not justified. The state offered and continues to offer, we will extend agree to extend the pretrial interview deadline if they wish to interview yet again, potentially their own witnesses.

We have no objection to that. We have no objection to extending the pretrial interview deadline and that would be the appropriate remedy. In this case.

Your honor, with regard to the doctrine of uh judicial estoppel, I would submit to the court your honor that this is a doctrine that would not be applicable in criminal cases. And we cited to a case that could be analogous for that proposition and that's State versus Arevalo and that's 2002, New Mexico Court of Appeals 62 decision where in the New Mexico Court of Appeals refused or rejected the application of non mutual collateral estoppel. And in that case, the New Mexico Court of Appeals in citing standafer versus United States A US Supreme Court decision from 1980 noted that the question whether the contemporary uh doctrine of non mutual collateral estoppel basically um is an unknown for, for New Mexico Courts. Now in New Mexico, with regard to criminal cases, the important interest in enforcement of criminal law and the public interest in the accuracy of justice of criminal results are not present in civil litigation.

So what the defense is asking this court to do is to apply a doctrine from civil law to a criminal case.

And we have different concerns your honor. We have different concerns in a criminal case as we in a civil case. And so as the court in state versus Arevalo rejected and refused to apply the doctrine of non mutual collateral estoppel, this court must reject the defense invitation to apply

this judicial estoppel uh doctrine to this criminal case. There has been the state was not able to find any case where the doctrine of judicial estoppel was applied in a criminal case.

And that's because based on Arevalo, the appellate courts in this state would likely reject the application of that civil doctrine to a criminal case.

But assume if the court, even if the court were to consider applying judicial estoppel the state respectfully submits your honor that the defense has failed to meet the requirements. Um First, the party against whom the doctrine is to be used must have successfully assumed a position during the course of litigation. Now, the defense argues that there need not be a judicial decision, the state submits to the court that that is a prerequisite and even the case that they cite to matter of a state versus uh excuse me, matter of state of Kuan at paragraph 14, the court specifically says, quote under new Mexico law, a party successfully assumes or argues a position when the party takes that position before a judicial body, that position is at issue and the party is ultimately successful. The coon court uh cites to Wooten versus Vinson.

And in that case, the court declined to apply judicial estoppel in a dispute over attorney's fees to the plaintiff's argument that the fees were reasonable in part because the plain plaintiff did not ultimately convince the district court that her attorney's fees were unreasonable. This court had not yet ruled on the state's motion so that prong of the judicial estoppel doctrine does not apply. In this case.

Counsel argues that well, it's either a motion or they could or have an order and the first prong is met given the language from the couch and curse uh case, excuse me, the new Mexico courts, appellate courts would likely find and did find in that case that there has to be some judicial decision as it relates to the position that was taken by the party. But assuming the court finds the first prong is met, I would respectfully submit that the defense has failed to meet the prejudice prong and the judicial estoppel doctrine requires the defense to establish that they have suffered prejudice. There has been no prejudice in this case. Again, these were defense witnesses who were disclosed by the defense, presumably interviewed by the defense and that's why they disclosed them because they obtained information that they believe would be favorable to their position.

So there is no prejudice in this case.

And we're talking a very short period of time. And again, prosecutors pretrial decisions carry or enjoy a strong presumption of irregularity. Unless there has been a showing of bad faith, those decisions should remain in place your honor. There is no prejudice to the defense as it relates to this particular issue.

And the, as I noted your honor, uh under Harper, the decision here would be to extend the pretrial interview deadline, allow for the defense to speak to their own witnesses and that any prejudice is cured.

And we would respectfully request that the court deny the defendant's motion to exclude these witnesses. I don't know. We'll get a decision now from M Leblanc. Yes, you are. Um I'd like to address a couple of the cases that the state um has raised first with respect to um Arevalo State view, Arevalo on this case, your honor where they're talking about mutual collateral estoppel. Again, collateral estoppel is a different principle.

But what the, what the state with the court was deciding in this case was that by the way, this judge, uh Mary Marlowe summer was just great in the Hanukkah Terres trial.

I thought she was awesome. She's very, she's got a very funny demeanor.

It's like she's seen it all. She's just waiting for her pension. She's not excited.

About anything that's going on. Um, but she takes no nonsense and she's very, uh, deliberate and reasoned in her, in her decisions.

I, I like her quite a bit. The judge, there were two co defendants and they each had been assigned separate jury trial settings. Um, at one jury trial setting, um, one of the co defendants was found not guilty.

Then the co-defendant who was set to go to trial second, um, then instead filed a motion for judgment of acquittal asserting that because the other co defendant was now um found not guilty that the same should apply to him. And so that that was uh what decision was and the, and the court, you know, found that there was a lack of mutuality. So this is, you know, a very different analysis than judicial estoppel.

Um There is um precedent, however, for the use of um civil type um doctrines or principles when we look at, for example, um specific performance that derives from contract law and we have cited cases in our motion as well that have to do with um the proposition that when a state, when the state has um made an offer of a plea agreement, um where the defendant um detrimentally relies on that offer, um Even if it has not been yet accepted by the court, um then the state has to uh engage in specific performance and leave that offer open. So there is precedent, your honor for the inclusion of, um, civil doctrines uh within the criminal context when it is appropriate.

Um And in this case, it is appropriate in order to maintain the integrity of the judicial process. The other proposition that the state uh has put forth before the court was that, um, was that basically criminal prosecutions and their discretion in initiating and conducting those prosecutions, um, will not be disturbed those decisions by the prosecutors. Um, and for that proposition, they cited, um, Blackledge v Perry and in this case, that was cited by the state, um, actually, the court did not say that the prosecutorial discretion would stand absent bad faith.

They, they say the opposite.

What they said was that even in the absence of bad faith, the state cannot indict on a felony after the, after the, um, defendant had been convicted on a misdemeanor and then appealed the conviction and got a trial de Novo. And they said even whether it was not that faith, the prosecution cannot do this because in fact, um, they don't want this to have a chilling effect on, um, defendants who would be exercising their right to appeal.

And so, uh, so that, that is not accurate, that, uh, that bad faith is the only way in which a prosecutorial discretion can be overturned. Um, and I would ask the court to consider, um, the fact again, in the state's own words, in their motion that they cited on that they filed on May 6th, the rules do not contemplate gamesmanship and this court should not countenance such conduct. I will also point out as a couple of final points um that the state talks about, you know, the time the defense had to investigate this case.

However, the state has had even longer, the state has had nearly three years to investigate this case. And somehow within that short window of, you know, less than 48 hours between when the last witness had been interviewed on May 31st. And then the moment that the defense had filed its, um, had submitted its courtesy copies and filed its notices of withdrawal of witness and also its new amended witness list. Um Within that period of time, what changed, what additional investigation was had that, that didn't already take place before the court, nothing about was on the changed was that the defense revealed its position and then they sought to take advantage.

Um And in addition, the state says that they filed its motion to exclude as a placeholder motion. Um first, in order to file a motion, there has to be good faith.

You have to have an actual basis to file a motion. The state in their motion claimed prejudice that is different than a placeholder motion. If they're saying it's just a placeholder, then how are they making assertions of prejudice? Um If it's just, if it's just something, so it sounds like the state is saying that those are just words that they included because that was the standard that they needed to meet.

Um, rather than actually determining that they had suffered prejudice because it was merely a placeholder. Um So we would ask the court, uh, again to, uh, grant the defense motion.

Thank you your honor. Thank you for your presentations. Counsel. The court makes the following ruling which will be followed up by a written order.

The court denies the expedited motion for order excluding witnesses.

Uh I, I do not think that the defense has demonstrated the prejudice that is required under State v Harper. The defense was on notice that the state may call defendant's witnesses through their may 6th witness list addendum. And given this notice, the court does not find that defendant was prejudiced by the later file, June 2nd 2024 witness list addendum with respect to the judicial estoppel argument.

Um That, that also, um, is denied, um, as part of this order because the doctrine is to prevent parties from playing fast and loose with the court by successfully arguing one position and then later adopting a position inconsistent with the first and there, I don't think you've met the prongs of, first of all, they didn't successfully argue before the court. And also, I don't think that there's uh the prejudice as contemplated by King. So, um, you'll get, you'll get right first battle of the day defense motion to exclude witnesses, their own witnesses, one of whom is gonna testify that he watched, he watched Alec Baldwin press the trigger when the gun in Baldwin's hand discharged and killed Helena Hutchins.

That's a defense witness that the defense suddenly tried to withdraw when, when this came out and now, but now it's a state witness. So first battle of the day by Judge Mary Marlowe summer called for the state prosecution of Alec Baldwin. 10 State Vers defense.

All right, let's continue. The second battle of the day will be the state's expedited motion for use immunity. This is, this is the, um, the immunity that the state wants to grant. Hanna Guterres.

The armorer already convicted of involuntary manslaughter in the killing of Helena Hutchins. Her, um, reckless mens rea being the manner in which she failed to keep live ammo off the set and out of the gun handed to Alec Baldwin. She was convicted of involuntary manslaughter at trial a couple of months ago, sentenced to 18 months in prison serving that sentence.

Now she is appealing her conviction.

Of course, what do we say? Appeals are for losers? Um, less than a 1% about 6/10 of 1% chance of meaningful relief on appeal. And I have to be honest, I didn't see any glaring legal errors in her trial that would warrant any kind of reversal on appeal. But theoretically, she could win a new trial on appeal and come back on to trial So she doesn't want to be compelled to make statements that could be used against her on appeal or in a retrial. Uh And that's why the grant of use immunity.

So if you're given immunity for what you're being asked about, then what you answer use immunity cannot be used against you in a future proceeding.

So there is no incrimination and if there is no risk of self incrimination, you can be compelled to testify or held in contempt of court. So the state is filed a motion or request with this court to grant Hannah Guterres use immunity so they could, they can compel her to testify in the trial as a state witness. The defense obviously does not want Hannah Guterres to testify because much of what Hannah Guterres has to say is harmful to the state. We covered this yesterday.

Uh When we covered, we went over the uh you immunity motion for Hanne Guter. So that'll be the second argument of this morning. Hopefully, the judge is gonna give us uh her decisions in real time like this. That would be great.

Sometimes she says I'll uh I'll think about it and give you a decision in a week.

But this was nice. We heard the, we heard the first decision on the first battle about the defense being able to suddenly withdraw witnesses has been denied and the state won on that argument. All right, let's proceed here these orders.

Uh next week All right. Next up.

All right, this is the state's expedited opposed motion for use immunity. And um that's me your honor. All right, Mister Bowles was trying to get on.

No, that um no, this isn't his.

So this is uh Kerri Morrissey, the original special prosecutor, the lead prosecutor of Hannah Guterres who achieved the conviction there. So this uh motion by Ky Ky Morsey by the state every time I talk I should make myself bigger.

So this is Kerri Morrisey, the special prosecutor who secured the conviction of Hannah Guterres. She's filed the motion for use immunity that Hannah Guterres should be given, use immunity so she can be compelled to testify.

Um, in the Alec Baldwin trial, that motion for immunity is being denied, not uh being denied, um being opposed, not just by the Alec Baldwin defense team, but also by Hannah Guterres own lawyer, Jason Bowles, um who apparently is still representing Hannah Guterres on appeal. Now, that's a separate issue I should address, I suppose that's crazy. First of all, he was very, he was poor at trial.

Um I, I know he's got some kind of reputation in New Mexico and, and I guess he's a, if I recall a veteran of some kind and, and thank you Jason Bowles for your service, but he was not great in that trial and he was not great at all in uh as counsel in the interrogation of Hannah Guterres, her second interrogation by police detectives, homicide detectives. Uh, sometimes he was on his phone, sometimes he was flirting with the two female detectives.

I mean, it was kind of embarrassing and he just let his client talk and talk and talk and talk.

That's, that's not what a lawyer is supposed to do when we say don't talk to the police and unless your lawyer is present, it's because we presume your lawyer is gonna do something, not just sit there like a, like a lump on a log, but in any case, however good your trial attorney might have been. If you get convicted and you're appealing, you need appellate counsel, not trial counsel. First of all, it's a very different skill set, appellate, trial work. Uh Sorry, appellate work rather than trial work.

It's a very different skill set. Second of all, one of the arguments you want on appeal always in your pocket is ineffective.

Assistance of counsel that, hey, the reason I got convicted is because my trial lawyer sucked. And that's one of the few uh basis of appeal that do not need to be preserved at trial by an objection. So a lot of, a lot of potential appeals are lost because the trial counsel didn't object at the time. And if there's no objection, it's not preserved by appeal. And generally the appellate court won't hear it.

But if the question is my lawyer was unconstitutionally ineffective, you have a constitutional right to effective assistance of counsel, if your argument is, my counsel was unconstitutionally ineffective. Well, then, of course, he didn't object, he's ineffective.

So you don't need an objection to argue that to the appellate court. So that's always a grounds of argument. Now, it's not a very good grounds of argument.

The, the, the threshold for being ineffective counsel is so high, it's almost never achieved.

But you wanna be able to make the argument. You can't really make the argument that your trial counsel was ineffective. If you're keeping him for your appeal, that doesn't make any sense.

So that alone is crazy. Uh It would be fun to see Jason Bowles back uh arguing in court again.

I mean, in this hearing, that would be funny. So apparently, uh he's trying to uh get involved in this argument about the youth immunity too. But uh you know, to represent his client in this argument.

Well, I, I was actually wondering why he wasn't on because he did file a response. That's correct your honor. And I believe the state's reply addressed both um defendants, um, both defendants briefings as well. Well, but there's an issue there because the defendant Mr Baldwin does not have standing to oppose use immunity for MS Gutierrez.

That's, that's, that's outlined in, in, in the case law.

I can give you the case that State B Brown, ok, where I didn't even call, call this yet. I just mentioned about Mr Bows. So let me try to see if, um, uh, staff can get him on now. So, good judge, judges being a good judge following procedure like III, I don't want to hear any argument until we do it right and doing it right. Means that first I'll, it's the state's motion.

So, first I'll call the state state. You're up, let me hear what you have to say. Then I'll call the defense and then I'll call the state to rebut.

That's the process. That's how these things are done. Not just, it's not a cocktail party, not just random arguments, uh being thrown around the courtroom.

So she's trying to get a Jason Bowles. Poor Jason Bowles. Oh my God.

If he calls in from a hot tub or something, I am going to lol Yeah, this judge is very, very, very sharp, very sharp and uh I like her quite a bit.

So if I were, if I were handed guitarist, I would definitely, I mean, I think was he ineffective? I don't know, man, when he was in that interrogation that the second Hannah Guterres interrogation, the first interrogation of Hannah Guterres by uh detective Hancock and the, the second detective, I forget now who that was Hancock would ultimately be the lead detective. When Hannah Guterres was in her first interrogation, she had no lawyer present. It was the day of the shooting.

It was a few hours after Hannah uh Helena Hutchins had been shot dead, but in the second interrogation when Hannah Guterres got rid of the purple hair and the crappy clothes and shows up in like a sundress and a bow in her hair, I guess, I guess Jason Bowles got that right. But when she showed up for that second interrogation with her lawyer, Jason Bowles in the room, she's in there for like, I forget it a long time, an hour, an hour and a half, two hours and most of the time he's just sitting there, he's not gu guiding the, I don't remember once him advising his client don't answer that question. All right, next up is uh D 1010 2024 13 state, New Mexico versus Alex Ray Baldwin.

Uh Again, this is the order denying states amended, opposed expedited motion for use immunity for Hannah Gutierrez and parties that are arguing state your name, Carrie Morrissey on behalf of the state who's on behalf of the defense.

It will again be briefly Miss Blanc and I, I understand Mr Bowles is on too. Um um So I don't know if the court's waiting to hear from him. Ok.

Go ahead, MS Morrissey. Um So your honor as an initial matter, uh the defendant, Mr Baldwin has no standing to oppose use immunity um of MS Gutierrez A and that's laid out in the state versus Brown 126 New Mexico 338 A. And I imagine that's the reason that their uh response indicated really that their complaint was that it wasn't timely uh a and didn't really uh articulate any other objections. And that's because they're aware that they don't have standing uh to, to present any other objections.

So to, to kind of back up MS Gutierrez, as the court can see from the pleadings was initially named on the state's witness list in February. She was then named on the defendant's witness list in April and I believe she was also named on the defendant's witness list in May.

Uh She was scheduled for a pretrial interview after some difficulty. Um And I personally intervened and set up that interview even though it was the defendant's responsibility. So we interviewed her and as the court can see when we interviewed her, um I would certainly argue inappropriately.

Her attorney instructed her to assert her fifth amendment privilege to questions that did not trigger just a minute. Is there a reason why um, the attorneys are not on video under our rules? You're required to be on video when we're doing hearings. Um The, I'm sorry, your honor. I just kind of lost my train of thought. Um So now I lost my train of thought.

I was gonna make a comment there.

Um Oh, yes. So your 5th 5th Amendment right? Not to incriminate yourself. We all have that right? But it, it's not a universal privilege to not answer any questions. Uh because there are questions that don't carry the potential do this again. So your fifth amendment right, not to incriminate yourself.

We all have this. But your fifth amendment right not to incriminate yourself is not some universal license to not answer any questions. It's a license of privilege, a right to not answer questions that may incriminate you.

If the que if the answer to the question does not have the potential to incriminate, you're obliged to answer it. If you're under oath in a deposition or testifying at trial, this, the court can compel you to answer.

Now. If it's a question that has the potential to incriminate you, you can assert your fifth amendment right? But this can be challenged and, and the court can say, well, you need to explain to me in what way this has the potential to incriminate you and if you don't convince me, I'll compel you to answer. So, uh in the case of uh Hannah a terrorist, there might be lots of questions about like, you know, how often did you, what steps did you take to ensure there would not be live ammo on the set? Well, that might incriminate her if the basis of the criminal charge against her, is her recklessness and alive or allowing live ammo on the set.

But if the questions were, I was gonna say, what is your gender? And then I remembered we live in 2024. So who knows? Um, how many feet do you have? And she said, uh I'm not gonna answer that question on the basis of my fifth amendment, right? Not to incriminate myself that the court could compel her to answer how many feet she has has nothing to do with any criminal charge against her, any legal liability she's facing. So here, Carrie Morrissey is saying, listen, we were asking her all kinds of questions that have nothing to do with her legal liability.

They may have a lot to do with Alec Baldwin's legal liability, but you can't claim the fifth amendment to protect someone else. You protect the fifth amendment to protect yourself. So this is the argument Carey is making in the moment here. So she was scheduled for a pretrial interview.

We interviewed her, Mr Bowles instructed MS Gutierrez to uh assert her fifth amendment privilege when questions were posed to her that didn't really trigger her fifth amendment privilege. Uh The state is not seeking information from MS Gutierrez about her criminal conduct. The state is seeking information from MS Gutierrez about the criminal conduct of Mr

Baldwin. The court can see from the transcript of the interview uh at one point, MS Gutierrez just asserted her fifth amendment privilege without the assistant attorney.

Uh A and, and, and when II I mentioned to Mr Bowles, II, I said, is you're not really advising her to, to assert her fifth, she's just doing it on her own.

And he said, well, I think she can do that. Uh So, so we have MS Gutierrez who doesn't understand the circumstances in which she gets to assert her fifth amendment privilege just asserting it. Uh And her attorney not, not counseling her on that. So the bottom line is, it took, it, it took a long time to schedule the pretrial interview.

That's the fault of, of uh Mr Baldwin's counsel and MS Gutierrez's counsel, not ours. Um They listed her, I believe initially on April 19th, we requested her pretrial interview on April 21st. We didn't create any delay at all. Uh Her interview was scheduled and Mr Bows did exactly what Mr Baldwin's counsel wanted him to do, which was just have her assert the fifth to everything, uh because they don't want her to testify.

She is listed on their witness list and they presented her for a pretrial interview, but they don't want her to testify.

They want to get her statements in as exceptions to hearsay and certainly what the state uh is arguing to the court is that. So what Karen Morrissey is saying here is what the defense is trying to do. She's arguing is get into the record, get into evidence for the Alec Baldwin jury statements by Hannah Guterres that are favorable to their client without having to allow in statements that are unfavorable. So only one side of the Hamme guitarist story and they'll do that by um taking statements that are hearsay statements that were made outside of the Alec Baldwin trial and introducing them in the Alec Baldwin trial for the purpose of asserting the truth of those statements.

Now, these could be recordings. This could be live stream of her testimony. Uh, well, she didn't testify in her own trial but uh, her statements in the interrogation, um, other statements may, uh, may be prison calls, uh, any out of court statements.

And they're gonna say, well, these are exclusions to the hearsay rule, so they should be admitted and there's a whole bunch hearsay is too complicated to get into.

Uh But some of these would be exclusions, like certainly the police interrogation, likely the the the jail calls would be appropriately excluded from the hearsay exclusion and be allowed as evidence. But then the state would only be introducing those statements, those out of court statements. And one of the problems, the reason we have a hearsay rule in the first place is very straightforward. And that is that if you're introducing an out of court statement by and the witness, the person who made that statement is not available is not on the witness stand, well, then you can't cross examine the statement, right? You can't cross examine a video. So the state

is saying, listen, if Hannah Guterres, if her statements are coming to the record, she's got to be a witness.

And we want the opportunity to cross examine her if she's gonna be a defense witness, not just her recordings but her and if necessary, we're prepared to offer her use immunity so that she can't simply claim the Fifth Amendment to avoid that from happening.

The, the hearsay statements that the defendant wants to present to the jury. Um Those are statements that have to do with MS Gutierrez's culpability and they are absolute. Yeah, I, I do want to address that point. So, um Morrissey, uh when she's talking about, well, Hannah Guterres in her interview was just asserting the fifth amendment privilege herself. She was not consulting with legal counsel.

You are allowed to do that.

You don't have to consult with legal counsel to assert it's your privilege. It's your right, you can assert it. The point. Carrie Morrissey is trying to make here is not that she doesn't have the right to assert it.

It's, it's that you're only allowed to legitimately assert it if your response would be incriminating. There, there's a, a legal framework that applies. And because Hannah Guterres is not a lawyer, she doesn't know this legal framework and therefore she's asserting the fifth amendment inappropriately. Now, if she was only asserting the fifth amendment, when her lawyer was advising her, there may be some presumption that the framework, the legal framework is being applied appropriately, but certainly when a non lawyer is doing it themselves, it's, it's not hard to imagine that she's applying her fifth amendment outside the appropriate legal framework.

Absolutely exculpatory to Mr Baldwin and they go to uh causation in this case, it's perfectly appropriate for them to present those statements.

I'm not objecting to that or arguing that point at all. But what I am saying is that in turn, the state is also allowed to present testimony from MS Gutierrez that goes to Mr Baldwin's culpability. Uh She has probably more information than any, than, than any other witness with regard to Mr Baldwin's culpability. Um We are simply asking that we also be able to present a testimony and evidence from MS Gutierrez. The defendant intends to do it. There's no question about it.

So the first thing that that needs to happen here is we need to have some kind of a question by question determination from the court as to which questions MS Gutierrez even has, can lawfully assert her fifth amendment privilege.

Once the court decides, ok, this is the category of questions where I believe she can assert her fifth amendment privilege, then we make a determination about whether or not she is, she

should have use immunity to answer those questions. Uh That's not terribly difficult. Her, her pretrial interview as the court can see was relatively short. I think it was 20 or 30 minutes.

Uh So we need to have a hearing. We need to have the court determine or, or, or the court potentially could even do it from the transcript. Uh Have the court just determine what she, what she needs immunity.

For, uh, at this point, a lot of the questions that we would ask her, she doesn't even need immunity for. Uh, she's just a normal witness. She's on the witness list she's been in, for example, if they were to ask her, if they were to ask Hannah Guterres in the Alec Baldwin trial, do you know how the live round got in the gun that could potentially be incriminating? And she could appropriately assert her fifth amendment privilege. And, and then if she does assert her fifth amendment privilege, they could potentially grant her use immunity. She could be compelled to answer that question, but her answer would not be able to be used against her in a future legal proceeding.

But if they were to ask kind of guitars on the witness stand in the Alec Baldwin trial, did you see Alec Baldwin press the trigger on the gun when it discharged? That doesn't incriminate her? It incriminates Alec Baldwin, which explains why Alec Baldwin's defense team doesn't want her testifying, but because it doesn't incriminate Hannah Guterres, that would be a question to which she could not legitimately assert the Fifth Amendment would not need you immunity to be compelled to answer interviewed.

We put her on the witness stand, we asked her the questions and she's required to answer him under penalty of perjury. Uh There, she's, there, there's no reason uh when she's posed a question, for example, uh was Mr Baldwin attentive during the firearms training that you provided. Ho ho how does that trigger her fifth amendment privilege? Um What did your firearms training with Mr Baldwin consist of how does that trigger her fifth amendment privilege? So this is just something that we need to get ironed out so that the jury can have all of the information that the jury needs that the jury is entitled to. And we don't create a situation where MS Gutierrez's statements only come in with regard to the exculpatory value they have for Mr Baldwin. They also need to come in with regard to the inculpatory value that they have with regard to Mr Baldwin. Thank you, Mister Baldwin.

I mean b sorry. Oh Bulls is here great uh As a, a preliminary matter judge.

Can you hear me what happened? Bulls. Yes, judge, I wanna make sure. Ok.

Um I'm having poor internet connectivity so I hope affected ineffective judge. I want to start by saying that that first of all, the assertion of privilege was on behalf of uh MS Gutierrez Reed, who, who wanted to assert her privilege. It wasn't on behalf of anybody else. Um She has a currently pending appeal as this court knows. So she has a conviction that is not yet finalized and the cases are very clear, she can invoke a privilege as to questions that may tend to incriminate her.

Uh I agree with the state. She cannot uh invoke as to all questions if those do not have a tendency to incriminate her.

However, uh when Miss Gutierrez Reed invoked it on her own at the interview, Miss Morrissey also said in the transcript and she left that out uh in the uh interview, I think she can invoke that. So that's what happened there. Um That was uh May 14th, your honor, preceding May 14th on or about May 8th. Uh It was a confusing situation because Miss Morrissey had told me that on a Sunday, an email that she would stipulate to unavailability or thought she would stipulate to unavailability so that the statements can come in uh through that exception.

Um So I thought it was going to be a stipulation.

Then there was um confusion on the interview date, then I had scheduling issues. So we got it set up. Uh Next your honor on May 14th, we got the indication from Miss Morrissey that she wanted to file a motion to force use immunity which under rule 5-116. Uh This court unquestionably has that uh authority and discretion um to do that. Uh Now your honor in a normal case and the case is cited in that rule. Um Bellinger and some others, this court can force uh use and derivative use immunity, which I do not believe should be selective as the state indicates.

Uh because the problem we get in there is that on cross examination questions may be asked then Miss uh Butters reed may have to invoke in the middle of trial if that were to happen, her testimony could, could be stricken.

So I think if this court were to uh order use and derivative use immunity, it would have to be blanket as to the crowd testimony and cross examination, I would submit to avoid those issues. But your honor, that's in the normal case. Um This is the mo this will be most likely the most publicized trial in the history of New Mexico or at least one of them.

Uh And because of that, we have submitted in our briefing, this is not the typical case.

Um If MS Guterres Reed testifies, there's no current restrictions about what could be asked of her. Um including on cross examination. Uh that testimony will undoubtedly be watched by millions of people. Uh Currently, MS Cutters Reed is set for trial in front of judge Ellington in August. We have moved to uh continue that your honor, but that is a separate matter involving alleged bringing a gun into a, a bar.

Uh There's no protections as to MS Gutierrez Reed uh on that trial because even if this court were to order use and derivative use immunity completely, uh that testimony she gives will be watched and heard by potential jurors and there's really no way to prevent that. Now, the government says we can do a motion to change venue if um there's an issue.

But, but again, that raises the issue, your honor. This is gonna be widely publicized across not only the state of New Mexico, but the country. Um So that's a very real concern. MS Cutters Reed has. She's also, and the state really didn't touch on the separate Ellington trial, Judge Ellington trial.

Uh But that is a very real concern of hers that if she's asked on cross examination questions related to that, it really imperils her ability uh later to defend herself in that proceeding. Uh We also have the appeal your honor, which we don't know what will happen on that.

But if it's remanded, the state gets a complete uh opportunity to cross examine or examine Miss Gutierrez Reed on matters, she would have never had to say uh going into that trial. So while the unquestionably has the discretion, I would submit your honor that uh because she is unavailable and statements can be introduced by both parties.

There is another way the court could handle this and avoid the potential uh constitutional issues that may arise in the future uh with her right to a fair trial in front of Judge Ellington and perhaps in front of this court if the appeals court uh reverses this case. So I think there's another way this could be handled for the testimony to be obtained by both parties. Um I'm going to allow the um the uh defendant to respond. I think that um under State versus Brown, um they can, they can, uh, take a position. Uh, let me read that case. All right.

So I think that, uh, you can oppose the motion and I'm going to listen to it.

Go ahead. Yes, your honor. Um, so I, I will be brief. Um, the, the issue that we have is with respect to the prejudice due to the timing of the state's request for you immunity.

Um, as the state has noted, um, they, Miss Gutierrez Reed was actually on the state's uh witness list as far back as February. Um, she was also on the defense witness list. Um And you know, the state could have made this application months ago because the situation is that MS Gutierrez Reed did not testify um in her own trial.

And so there were no new statements that were available to the state after the trial that were not already available to the state for the past nearly three years.

Um So they were aware of the situation. Um And they even, uh it sounds like from Mr Bull's representations, the state even indicated that they were willing to stipulate to unavailable without taking her um, statement which would have then, um, you know, resulted in, uh you know, the same position we would have been in without the grant of use immunity. Um But the state was aware of this.

Um, they were aware of this 50 witnesses ago, they were aware of this three years ago and they had her listed. So at this point, the state now as they're making all of these many numerous disclosures, they disclose us all of these, you know, phone calls um for Miss Gutierrez read again that we cannot possibly have the time to go through in advance of a pretrial interview of her.

Because what the state is indicating is they think she has much more information than the statements that have already been provided. But we don't have access to those statements we would need to interview her. So she's effectively becoming a new witness.

Um That now we would have to uh interview and prepare um for her at trial. And so, um the state had every ability to do this sooner.

Um And um we would ask that the court consider some of the items that were also in uh uh that I know were contained um in some of the other filings that the defense has submitted with respect to the volume of new disclosures that the state has made. Um And the prejudice that the defense will suffer if we now have to approach this new rather substantive witness. Um when we're talking about just 10 days, 10 business days um before trial.

Uh Additionally, the state has indicated that they requested for an interview right away and they weren't responsible for any delay.

I think that needs some clarification, your honor because the defense initially had subpoenaed. Um M Gutierrez Reed um for a statement. Um There were some scheduling issues um based on availability. Um We were, the defense actually was working within contacting um, the, uh, the prison facility and we did have that set up, but then the, the interview had to be canceled based on availability of Miss Gutierrez, Reed's counsel and she does have a right to have counsel present, so that had to be moved um in the interim as we were setting up.

The next one, M Morrissey indicated that she wanted a deposition instead of a statement. Um And so she needed to file a petition before the court.

The defense took no position on that. Um But informed M Morrissey that if that's something that she wanted, she would need to petition the court for that as is the appropriate uh criminal procedure under the rules.

Um She did not do so, but that did cause part of the delay.

And then ultimately, the interview was scheduled with Miss Gutierrez. Reed did take place. And the defense also um provided uh the information to the prison facility with uh the links um for her appearance. Um And so we would just um ask the court to note that there was nothing that prevented the state from petitioning this court for use immunity. And that is our sole objection at this stage is the fact that they could have done this while we still had the time um to conduct a full investigation of what her statements would be, um, without prejudice to the defense. But now, here we are in the 11 hour on the eve of trial and the state is making motions for use immunity that will, uh, you know, basically provide this witness who would be one of the most significant of the trial. And we are definitely prejudiced by this late request.

And we would ask the court to deny, uh, the state's application for, um immunity, at least specifically with respect to the timing and the prejudice that this would cause.

Um, the defense of Mr Baldwin at this stage and he is entitled to a fair trial and to an opportunity to prepare and present in adequate defense. All right, before you reply, I have a question for Mister Bowles. Is, is, is she gonna use that use of immunity or, or, or does she just plan to not take advantage of it? And, and your honor? I really apologize.

It noted that my internet was having connectivity. I heard part of the court's question.

Does, all right, does Miss Gutierrez to your knowledge, have any intent to answer the questions of given immunity based upon that? I mean, I'm looking at the interview. She, she didn't quite uh your honor.

She doesn't want to be co-operative in this case. Um I understand the court can order under use immunity blanket, use immunity testimony, but she does not want to answer the questions. Uh reply, Miss Morphy, your honor. If the court were to grant uh, the motion for use immunity and MS Gutierrez were to refuse to follow the court's order. Then she's held in contempt of court. Uh, pe witnesses don't just get to refuse to follow the court's order.

Uh She refuses, she's held in contempt of court.

We will be asking for additional jail time. But that's, that, that's how this goes. Um I, I will start by but, you know, it's baffling to me absolutely baffling to me that there is a defense attorney in this hearing, opposing immunity for his own client. If that is not an indication that he is acting as an arm of Mr Baldwin's defense team.

I don't know what is and listen.

Yeah, that's inappropriate. But yeah, I think it's absolutely true. Ok, let's move on to you all. It's her turn. Let's keep going.

Uh Mr Bowles Ha has, has told the court look, you know, it's really complicated judge for us to do it the right way for us to put her on the witness stand and a a and have her, you know, outside the presence of the jury or set a hearing and, and have her outside the presence of the jury, figure out what she can answer and what she can't answer.

Yeah, for anyone, for anyone who has some guess there is no love lost between uh, special prosecutor, Kerrie Morrissey and the Alec Baldwin defense team. They've accused her of lying of engaging in all kinds of unethical conduct. One of the one of the motions we'll hear later today this afternoon is alleging that Kerrie Morrissey, the state intentionally destroyed evidence to prejudice the defendant and therefore the indictment should be dismissed with prejudice. Never to be brought again. Alec Baldwin just walks away from all of this because of the bad faith conduct of Carrie Morrissey who remember is not a career prosecutor is a career defender, criminal defense attorney. So, yeah, she takes great offense at these accusations of being some kind of fascist arm of the state.

Um And the, and the defense has taken advantage of her, her, her criminal defense background several times asked her for favors. She grants the favors and then after she grants the favors, they use it against her in motions.

So, yes, she's very unhappy with the state and of uh with the defense and of the Baldwin defense. And of course, um I don't think she cares about the guitarist defense, Jason Bowles, I think, I don't think she thinks much of Jason Bowles. Uh But is it a credible argument that Jason Bowles here is being used as an arm of the Baldwin defense team? How is it not in his interest, client, in his client's interest to get immunity? How does that harm his client for his client to get immunity? I don't get it.

Now, you may want, you know, the immunity to be constrained in some way or clearly defined. So everyone under, everyone's on the same page on what it covers and doesn't cover that's fair. But clearly the beneficiary of Hannah Guterres being denied immunity is not really Hannah Guterres.

It's Alec Baldwin. So you have to do a blanket, ok.

Do a blanket. I'm not opposing that. Uh Mr Bowles's suggestion.

If that's what he thinks is the best way to do it, you can absolutely issue blanket use immunity.

She has to answer every single question under the court's authority. If she doesn't do it, she suffers the consequences of that. Mr Bows continues, continues even in the Baldwin case to present information to the court that is patently false and he's doing it again. He, he, he is in this hearing, telling this court uh that these lawyers, the defense attorneys and the state are gonna be able to and ask any question of his client.

It, well, the rules of evidence only permit us to ask relevant questions of his client.

Every lawyer who questions MS Gutierrez at trial will be subject to the rules of evidence will be permitted only to answer appropriate appropriate relevant questions. Those questions that are determined by this court to be appropriate. Uh The Ellington case is just a red herring.

Uh There is nothing about that separate case that is relevant to this case at all. I I would, I would be stunned if the court found otherwise.

Uh This is a completely different thing. It didn't have anything to do with uh with, with her uh participation on the movie set. She was in, in the city of Santa Fe.

A as just an individual. She wasn't working.

Um A and a and it's, it's absolutely ridiculous. Um Not to mention the fact that MS Gutierrez has another case pending in front of Judge Ellington because of her own conduct.

So we, we, we don't turn around and say state you can't use her as a, as an incredibly important witness uh because she's got this other case pending. Um She has another case pending because she seems to have committed additional criminal offenses. That's kind of the way it goes.

Um with regard to Mr Baldwin's argument uh that there is prejudice based on the timing. Let me tell you, judge, I was not aware that I was going to need a motion for use immunity.

I was not aware that Mr Bulls was going to show up to a pretrial interview and instruct his client to assert her fifth amendment privilege to questions that do not trigger the fifth amendment privilege assertion. Now, based on my experience with Mr Bowles in the Gutierrez case, maybe I should have anticipated that, but I did not. So I didn't learn of that until we finally got the pretrial interview done. Um M Leblanc M Leblanc's statement about the short period of time that the state was considering asking for a deposition that, that didn't create any delay at all.

Um The she I, at that point in time, MS Gutierrez was already scheduled for a pretrial interview. That pretrial interview was never canceled. Uh uh up uh up until Mr Bowles indicated that he had scheduling difficulties. So the pretrial interview was scheduled, we talked briefly about having a deposition.

We reached out to Mr Baldwin's counsel.

We asked for their position on that. They said they took no position on it and I said, ok, I guess we'll set her for a deposition. Then they said, no, no, no, we're not opposing it, but we think that you need to get the court's approval. I'm not creating that delay.

Um It, they, they're creating that delay. And at the end of the day, we said, look, we'll, we'll just go ahead and interview her on the day that she set, which was May 9th.

Actually, I think it was May 10th. Uh So we agreed, we'd go ahead and a and interview her on that day. The interview was never canceled. Mr Bowles canceled the interview.

We got her scheduled on the ninth. Mr Bowles canceled the interview. We were trying to get her reset and because I sort of had this feeling like if you want something done right, you better do it yourself. I did it myself and I finally ended up getting my pretrial interview um wherein Mr Bowles unlawfully instructed his client to assert her fifth amendment privilege to nearly every single question that was asked of her.

Uh So to say the state should have just been able to anticipate this roller coaster ride is absolutely ridiculous. Now, with regard to the jail calls, uh the jail calls were provided weeks

ago, I know how long it takes to listen to the jail, the jail calls because I've had to pay my investigator to do it. There are two lawyers on the state side.

There are 10 lawyers on the defendant's side and they have at least one investigator. So if they can't get that under control relatively quickly, I I I'm, I'm not sure what to say.

Um We are not, I wanna make clear we are not asserting that MS Gutierrez has a whole bunch of additional information that nobody's ever heard of. She is specifically being called by the state so that she can simply give the jury the information that she already provided to law enforcement and to OSHA with her lawyer's advice to waive her fifth amendment privilege. So those are the things that we're asking to, to, to get in through her testimony. There's one other statement that she made in a jail call that was specifically provided to the defense. They don't need to go listen to 300 some of them to find that we gave them the number.

Uh We showed them exactly where it was now at the end of the day, when the defendant comes to court and says, judge, we don't have enough time.

We are prejudiced because we don't have enough time. I want to take the court back to the hearing that we had on February 20th where we were talking about scheduling and the court suggested that the trial be scheduled in October and the state suggested that the trial also be scheduled in October and it was Mr Spiro, it was the defendant who said, no, no, no, we need to have a trial in June. They wanted a trial last month. They got a trial this month and they continue to come to court and say judge, we don't have enough time, they don't have enough time because they asked to have the trial set too soon in a case that has massive discovery with regard to any of their complaints about all of these documents that, that, that have been provided. I have to tell you judge, you know, when, when, when, when they indicate in their arguments that they received this massive amount of discovery, what happened was we realized that not all of the lapel videos uh were in our possession and therefore, were not in the defendant's possession.

So as soon as we realized that we got those videos from the Sheriff's Department, we uploaded them, we provided them and we realized that the vast majority of those videos were duplicative.

So what was happening is two police officers were conducting an interview. The defendant didn't have the lapel camera from one of the officers, but they did have the lapel video from the other officer who was present for the interview. So a lot of their complaints about, uh, this stuff was coming in late.

They, they're, they're really, uh, uh, over exaggerating any potential prejudice that they could have possibly had, uh, from any of that. And again, uh, they asked for a June trial over o because of my objection, the court gave them a July trial when we were intending to have an October trial.

So if they don't have enough time, there is a remedy they can ask for a continuance. Thank you here here.

Right.

The court makes the following ruling to be followed up by an order of the court to be, uh, filed next week. Uh, the state denies the state's amended, opposed expedited motion for use immunity for Hannah Gutierrez. It's pretty clear, um, that she does not intend to co-operate.

The court may grant use immunity pursuant to rule 5116. If the court finds the testimony may be necessary to the public interest and the person has refused or is likely to refuse to testify. So it's really the public interest portion that I'm going to address because she has indicated that she won't testify. Um, you've indicated that, um, she possesses information about what she already told the investigators. I don't think that, um, there is anything that um, I mean, I haven't heard of anything that she might testify to that, um, someone else could not testify to.

Um, even about her, her observations.

Maybe, I mean, maybe the only thing is the only portion is that, um, talking about how Mr Baldwin didn't, um, uh, you know, didn't, didn't, uh, wanna be trained and things like that, um, which she could probably answer without, um, the use immunity. But, you know, the state says, well, the simple solution after she refuses to answer answer, even though she's been given immunity is that, um, you can hold her in contempt.

I'm not going to do a mini trial within a trial. And um, I think that when all is said and done, if she, she's going to be an unavailable witness, then we're at the 11 804 evidence rule on unavailable witnesses. So I think, um I think you should prepare accordingly if I, if I could just ask a, a point of clarification, um given that the court is denying the motion, uh, the state still can ask questions of MS Gutierrez that do not trigger her fifth amendment privilege. Um So we, we can still have her transported, we can still put her on the witness stand. Uh Does the court want to deal with what questions she has? She, she has the right to assert the fifth to prior to trial or do you just want to wait and do it then, right? I, I mean, I'm forecasting based upon Mr Bows is saying based upon that interview that everything is going to be a non answers and then there's the unavailability of the witness.

Well, and we certainly will be renewing our motion but, but, but I hear, I hear I hear your ruling and, and, and I'm not, uh, I'm not just, uh, I'm not arguing with it.

Thank you. All right. All right. Thank you.

We're in recess in this case.

Did you all wanna take a break or are we continuing? I see nods but I don't know what that I would like a is preferable to the court. Ok. We'll take a uh what time? 10 we'll be back at quarter of 11.

Ok, thanks bye bye quarter of 11. So what are they doing? Are they just trial and say that he was subjective? They can't I see that in the Odyssey. Alright. So I thought I was gonna get a break.

Uh What are we doing? Oh no, there's another one state's motion for clarification of courts order, amending another order.

What is the other order? 421. Let me see if I can find out quickly before we dive into this. What happened on 421? Uh I don't, ok. I don't see in the court filings in amended 421 before 2123. Holy cow. All right.

Um What is that from? Oh, ok.

So this this requires some background. So, Alec Baldwin, this is the second indictment of Alec Baldwin for the shooting death of Helena Hutchins. Alec Baldwin had a first grand jury indictment brought by a first set of prosecutors and um that got messy.

Uh One the special prosecutor appointed, decided to also run for the new Mexico legislature. And apparently, uh you can't have both jobs at the same time and there were some other irregularities and, and it was decided late in the day to have the gun sent to the FBI lab. So this was before Kerri Morrissey was appointed.

So the decision was made to dismiss that first indictment and it was made at the request of the defense, Alec Baldwin's defense team because they came to Kerri Morrissey. This is one of the times they took, I would say advantage of Kerrie Morrissey and, and her defense attorney perspective as a career defense counsel rather than a prosecutor, they came to her. And they said, Carrie, we hear that the, the, the pistol, the revolver, uh that was in Alec Baldwin's hands when it discharged and killed Elena Hutchins.

We heard it was just sent to the FBI labs to see whether or not it's possible the gun could have just gone off by itself. I, if it turns out that's true, that would be very exculpatory for our client probably wouldn't get an indictment.

Uh Is it possible we could wipe away this first indictment and then wait for the FBI results to come in and then make a decision about how best to move forward. So that this indictment is not just hanging over our client's head when, when it may just, you know, it may turn out the gun went off by itself. And Kerri Morrissey said sure as a professional courtesy, we'll do that. We'll, we'll, we'll dismiss that initial indictment.

There's other problems with it anyway.

We'll start with a clean slate. If, if we get the FBI results back and it says the gun could not be fired unless the trigger was depressed, then we reserve the right to empanel a second grand jury and re indict your client. So, what happened on April 21st? 2023? Which is what this next argument about that is here. I can, I can pull it up here.

Oh, I pressed the wrong button. Hold on. Uh, let's see if I have the right one. Yes.

So this is the, um, Noel Pross motion filed by KA M uh, Jason Lewis and Kri Morrisey. Jason Lewis was co counsel on the, on the Hanu Guterres trial.

I don't, I don't know if he's been dropped for the Alec Baldwin trial or not. I haven't seen his name a lot. Uh, but he was working with Morrissey on these prosecutions at this time. May 21st 2023. And this is the motion they filed with the court to dismiss the case.

The charges. The grand jury indictment against Alec Baldwin, the first one without prejudice.

See these words here, I can't highlight it the bottom sentence. The case is dismissed without prejudice and the investigation is active and ongoing.

So this was a professional courtesy by Carrie Morrissey to the Baldwin defense. Now, ultimately, they got the results from the FBI lab. The FBI said this gun was tested, the hammer would not drop and fire a cartridge unless the trigger was depressed. Kerri Morrissey Impaneled, the second grand jury presented the evidence to the second grand jury got a second indictment and that's why we're in court here today.

So the second argument here is defense motion.

Uh, let's see. Oh State's motion for clarification of courts order amending the 4 21 23 order, which would have been this, I guess is what we're going to hear about. So let's take a what happened here. It is.

So we had a short break. I think we still have after this argument for which there's an hour scheduled, we should have a uh a lengthier, a couple of hour lunch break. I think, I hope.

Ok, here we go.

Let's see if I can catch up for inspection. I see that, I think this is, I see that in Odyssey, the motion to dismiss indictment for destruction of evidence is listed twice. I think the first one is supposed to be the F and F.

That's our understanding. OK, good. All right, that's supposed to be the two o'clock to four o'clock mountain time for in camera inspection of joint defense agreement state. Ok.

So I maybe I was wrong state motion for in camera inspection of joint defense agreement. So the state wants to know if Jason Bowles, defense attorney for Hannah Guterres has a formal agreement to cooper with defense counsel for Alec Baldwin.

Now, they, they, they, they are not asking to see that agreement themselves. At least not.

Now, they're asking for the judge to look at that agreement in isolation and determine if you know there's anything wrong with it that should be brought to the state's attention and the court is ready. State your honor.

A at this juncture, I believe uh this is a Linda Johnson at this juncture. The um counsel for MS Hannah Gutierrez Reed responded that there is no written joint defense agreement and so it, I unless there is a written joint defense agreement, I think that moots the state's request to, for the court to inspect any joint defense agreement.

So, on the record, are you withdrawing your motion? Yes, your honor, Greg. We would uh like confirmation from the defense that there is no written joint defense agreement. Well, notably, oh, I'm sorry, so confirmed.

Ok, so confirmed. All right. So the state would be withdrawing that motion at this time. Please prepare that paperwork.

Thank you. All right. Let's go into the full and font motion if we're ready, are we ready? We are your honor and I'll, I will be handling that with the court's leave for the day.

So I don't know what this is the f infant that might. That sounds like it's a case law, like a citation to a court decision, appellate, court decision. Uh And I've never seen this guy, uh John Bash, obviously part of the uh this is a new name to me, Part of the uh Alec Baldwin defense team.

Let's see. And that looks like actual office space defendant. All right, thank you.

All right. So the motion is get my motions here. I understand. All right.

Uh This is the motion defendant, Alec Baldwin's expedited motion for motion to dismiss the indictment for failure to allege a criminal offense. Ok.

Thank you.

Ok. So this is, this is what was scheduled to be argued after lunch. So I guess I'm not getting a lunch break and neither are any of you.

So this is scheduled for a uh an hour now just uh to preface this, to provide some context my understanding. So this kind of motion a motion to dismiss an indictment for failure to state a criminal offense.

Basically, the defense is saying, listen, if everything the state says is true, it still fails to satisfy the elements of the crime charged. So every criminal charge has certain elements. One of the elements of this involuntary manslaughter charge is essentially a mental state of recklessness. Um, and the, my reading of the defense motions up to now is saying, listen, it can't have been reckless unless Alec Baldwin affirmatively knew there was a bullet in that gun and no one's alleging that he knew there was a bullet in the gun.

They're on the state's only alleging that he knew there could have been a bullet in the gun because he knew it was a real gun. And therefore, because he knew the gun could be deadly, his conduct in pointing it directly at Helena Hutchins without ensuring no live ammo in the gun and manipulating the hammer and the trigger. That's the recklessness that qualifies this as involuntary manslaughter.

The state is saying, even if you believe all those things, the state says that he didn't inspect for live ammo that he pointed the gun directly at Helena Hutchins said he manipulated the hammer and the trigger. That is still not enough for involuntary manslaughter. Unless Alec Baldwin knew for a fact there was a live round in the gun.

Now, I would suggest that's not the legal standard for involuntary manslaughter. A good analogy as I like to use is to, uh, uh, a drunk driving homicide. Uh, that's a classic definition of recklessness.

Someone gets drunk at a bar, they get behind the wheel of their car, they're driving home, they're not intending to run anybody over and all they wanna do is get home. They don't mean any harm to anybody, there's no malicious intent, but they know that when they're driving drunk, they're presumed to know, uh, because driving drunk is an inherently dangerous activity just like handling a gun. They're presumed to know that when they're driving drunk, they're creating an unjustified risk of death or serious bodily injury to others. And if it turns out there's an old lady in the crosswalk when they come slamming through that intersection and they run her over and kill her.

That's vehicular homicide. That's a reckless involuntary manslaughter by the defense standard here.

That kind of conduct, driving drunk and running an old lady over in a crosswalk could only be involuntary manslaughter.

If the drunk driver knew the old lady was going to be in the crosswalk, that's not the legal standard. Folks. The legal standard is the risk that's being created.

But that's what the, uh, I imagine what we'll be hearing from the defense here. So let's see what they have to say. And it may mean we wrap up earlier in the day since we didn't take a lunch break.

All right, here we go.

Go ahead. Thank you, your honor. And it's, uh, I haven't appeared before you before. My name is John Bash. I'm one of the attorneys representing Mr Baldwin and it's a pleasure to be here one bit of housekeeping before I begin.

I know we have a motion later today that involves witnesses if, if you had a sense of when that will be, we can go ahead and start notifying the witnesses to be ready at, at a certain point in time. If that would be helpful to the court, I believe after the lunch hour, this is probably gonna take us to noon Mountain time, this motion or if it doesn't, we'll break at noon and I'll, in other words, I'll call you back at one basically.

So noon mountain time is in 40 minutes, folks. Thank you.

Thank you your honor. And, and, and with that all begin, may it please? The court? We have moved under rule 5601 D to dismiss the indictment for failure to state a crime.

And our submission. Your honor is pretty simple under State versus Henley, which is the New Mexico Supreme Court's authoritative construction of the involuntary manslaughter statute. That's at 2010 N MS C 39.

In order to convict a defendant of in involuntary manslaughter. Under New Mexico law, the state must establish the defendant's subjective awareness of a substantial risk that his or her actions could cause harm to another person.

It's a subjective standard. It differs in that respect from certain other recklessness offenses under New Mexico law.

So that this is probably this is probably a correct statement of the law. I think where the argument is going to be is in the definition of what we mean by substantial. So the defense I think is going to argue that because New Mexico law requires a substantial risk.

That means like, uh that should be interpreted to mean a highly probable risk. In fact, I think they'll argue that it means a, a definite subjective knowledge that in this case, there was a round in the gun or the old lady in the crosswalk, the state's gonna argue that substantial means something other than speculative. It means there's substance to the risk.

There's reason to know that the the feared danger could occur.

In this case, I would argue there's the substance is, you know, it's a real gun that you're pointing directly at another human being and you're manipulating the trigger and the hammer that it doesn't mean you have to know there's a round in the gun. It means you have to know there could be a round in the gun, that's the substance, the gun is capable of firing the bullet. The

defense is going to try to argue that, well, it's not a substantial risk on the facts of this case unless Alec Baldwin knew. In fact, there was a round on the gun and nobody had that subjective knowledge and no one is claiming he knew that and or submission the state. And I think we will show this has endured any ability to show that Mr Baldwin had a subjective awareness of a risk that the firearm in this case was loaded with live ammunition.

Without, without that essential piece, the state cannot establish the element of the, the offense. It's not a question, your honor of evidentiary sufficiency.

It's not a question of how different fact finders can view the facts. It's a logical legal question. The state has said that guns kill people.

That's true. They kill people when they are loaded with live ammunition.

If the state cannot even allege the essential piece that he was subjectively aware of a substantial risk that it was loaded with live ammunitions, they cannot prevail. Now, your honor, there has been a dispute between the parties about the extent to which the state is bound by its factual assertions in the Gutierrez Reed trial.

And I'm gonna go into that in a little bit, but I don't think the court actually even needs to address that dispute because the state's concession is on the face of the opposition that is filed to this motion. I direct the court's attention to pages 14 and 15 of that opposition. I think it was filed on May 21st in response to our argument that they can't prove and they haven't even alleged that Mr Baldwin was subjectively aware of a substantial risk that the gun was loaded with live ammunition. They don't say yes, we can and I'll get into this more in a second.

But they say two things. Let me see if I can. Uh So definition is substantial. This is from Oxford Dictionary.

So not a legal dictionary but substantial of considerable importance size or worth importance concerning the essentials of something. Well, it's the essential nature of a gun that it's an inherently dangerous instrument. You know, it's a real gun in your hand, you know, it can kill.

It's not just the bullet, it's the gun, you know, the gun is capable has the substantive nature, character of being able to fire a lethal round into a human being. I would be shocked if this argument was successful by the, they say, well, if he had done that, we'd be charging him with second degree murder, that is a concession that they do not think he did that, that they cannot allege that and they cannot prove that. Second.

They point to a bunch of other stuff he did and we'll talk about that, but none of that other stuff poses a danger to another person unless there's live ammunition in the gun. None of it does. They can't prove that element of the offense they don't even claim to.

And it's clear on the face of their opposition brief. So let me talk just briefly your honor about the full and font standard because I, I know you're intimately familiar with it, but the parties have joined issue to some degree on what that standard provides and the state's wrong about this. And I just want to clarify why they're wrong about it.

The original F and font case back in 1995 as I'm sure the court knows said there was a distinction between questions of fact and questions of law and that a, a pretrial motion to dismiss under, I think back then it was 5601 B now it's subsection D was only proper for questions of law and the state kind of clings to this distinction between questions of law and fact. But critically, your honor in 2016 and 2017 in the Pacheco and Platero cases cited in our brief. That's 2017 N MC A 83 and 2017 N MC A 14, the court of appeals rejected the distinction between questions of fact and question.

I mean, think about what the defense think about what the defense argument is here. Really, the defense argument is, you can take what, you know, to be a real gun, not check to see if there's ammo in it, point it at another innocent human being, right? No self defense justification. Nothing like that.

You're taking what you know, to be a real gun point it at another human being, cock the hammer, press the trigger, it fires a live round and kills that person and you have zero criminal liability. Does that sound right to anybody? Questions of law? Um And you can see why it's in any case where it's a question about the application of law to facts.

You can always frame any particular issue as a question of fact or a question of law.

So it's an unhelpful distinction. What the Court of appeals said instead is take the undisputed facts in the case, whether alleged, whether the state stipulates to them, doesn't dispute them. Take those undisputed facts and ask can the state on those undisputed facts satisfy the elements of the offense? And what the, the guidance that the Court of appeals gave in Pacheco was that typically that inquiry will turn on this question. Can the state reasonably assert the availability of additional evidence to satisfy the elements of the offense? So it's no longer your honor, an issue of whether it can be characterized as a question of fact or law. It's a question similar to motions to dismiss in the civil context of whether the undisputed facts show that the state cannot satisfy.

By the way, I'll mention as an aside, you'll notice they keep touching upon civil context law like they were doing with estoppel earlier.

Uh, that's because these are all civil attorneys. So the, uh, the two big partners from Emmanuelle Quinn, uh, there, there's civil litigators and most of these other attorneys are civil attorneys. They're not criminal defense attorneys.

And that, that's coloring their arguments by the elements of the offense. And just to, to tie the loop on that the state suggests that mental state questions like recklessness, knowledge, intent

can never be the subject of a successful full and font motion that is incorrect in the published 2013 decision in Mereta which we cite in our briefs and is at 2014 and MC A 60 the Court of Appeals did an intensive analysis of the facts alleged by the state to determine whether a full and font motion should be granted on a recklessness issue. There. It was abuse of a nursing home, uh patient by a doctor.

So it is just not true that mental state can never be the subject of a full and front motion. It is true that it rarely is.

Um but you rarely have facts like this where the state doesn't even allege that the crucial link between action and someone getting hurt that the defendant had no subject that had subjective awareness of that crucial link. That's pretty rare and that's why this case is different. So elements of involuntary manslaughter and I don't think the state disputes this point under Henley and the Henley case says this twice on page 108 of the Pacific reporter, the defendant has to have subjective knowledge of the risk of the substantial and unjustifiable risk that his or her actions will cause harm to someone else. I don't think that's disputed. In this case, the state can correct me if I'm wrong critically.

That's different than the way recklessness works under a lot of other statutes of this state. For example, the Child abuse statute, which the Supreme Court just addressed a few months ago in the Taylor decision has an objective standard.

So it's what the defendant should have known.

That's not true on involuntary manslaughter. The Supreme Court has been very clear about this. It requires subjective knowledge.

What did the defendant actually know about the risk? Well, uh, he knew that there was a real gun in his hand that was capable of firing a bullet and he didn't ensure that couldn't happen to Helena Hudgins. He knew that. So just putting those two things together the full and font standard and the elements of involuntary manslaughter. The state's position cannot work logically on pages 14 and 15 of their opposition brief.

In addition to numerous statements they made on the record in order to secure a conviction of MS Gutierrez, their position is that no one could possibly know that there would be live ammunition on this set. They do not intend to argue if their briefs and filings and statements are to be believed that Mr Baldwin had any subjective awareness of a substantial, not just any risk, a substantial risk that that firearm was loaded with live.

Yeah, I was right. See there, he's trying to argue that substantial means large. That's not what substantial means, uh substantial means um of, of substance, of meaningful, important, the essentials of something. It doesn't mean it has to be a large component of something.

It's not speculative, it's not imaginative, it's not unforeseeable. Initially.

If not, they can't show if he was aware of a substantial risk that whatever he did, whatever they allege he did could kill somebody or could harm somebody because a gun does not kill people unless it has live ammunition. It just doesn't work. It doesn't make sense logically and they have no answer to that basic problem.

Now, we've given the course the court a number of cases from New Mexico and elsewhere, analyzing involuntary manslaughter in the context of a particular weapon or object. And, and although the postures were slightly different, the basic question was the same.

Can these facts enable a reasonable jury to find involuntary manslaughter? And the courts closely analyzed the nature of the object. In one case, it was a knife. In one case, it was concrete and what the defendant knew about the object and found and, and analyzed it that way and the same analysis has to be done here. And if this, so just another juxtaposition, everybody remember the Kim Potter Taser taser taser case. She was convicted of involuntary manslaughter. She didn't even have a subjective knowledge that she had a gun in her hand.

She thought she had a taser in her hand.

The state doesn't as they don't contend that he had any idea there was live ammunition in that weapon. He is not guilty, he's not guilty as a matter of logic and law and there's the, the trial is not going to be able be able to overcome that whatever other things they alleged he did if he didn't know it had bullets in it, he cannot be guilty if he didn't know that the substantial risk that it has. So I, as I said, at the beginning, that was my expectation.

The defense position is if he didn't know there were bullets in the gun, he had to know there was a bullet in the gun, he can't be guilty of involuntary manslaughter. That's akin to saying if the drunk driver did not know there was going to be an old lady in the crosswalk, it can't be vehicular homicide. When the drunk driver runs her over and kills her had live ammunition in it, he can't be guilty.

Now, the state, your honor essentially has three responses to this and I'll just go over them briefly. One, the state links its position to an unpublished decision of the Court of Appeals in the Cerna case. And in that unpublished and therefore nonpresidential decision, the court canvassed a number of standards that it had previously used to resolve full and fund motions.

And the first one it canvas or discussed was the question of fact versus law and it said the defendant would lose on that standard. And the question in the case was recklessness in connection with reckless driving. Hey, I, I've got no sympathy for this lawyer.

I mean, I he's making a legal argument. I don't think it's a great legal argument, but he's making it with a straight face if I were in his shoes.

Let me put it this way.

This guy is probably getting paid $1000 an hour to make this argument and to, for all the hours he spent preparing this argument, whatever emotions he, he worked on and so forth. He's getting way well paid for this. I don't have sympathy for him. This is what lawyer. Sometimes you have to make a weak argument. Sometimes that's the only argument you have. At least he's not doing his pro bono folks and he's not doing it on a public defender salary.

But as I've said, as I've discussed earlier, that standard has now been rejected in published decisions in Pacheco and Platero.

So that is not a good standard. That was a nonpresidential decision. It went on to apply the correct standard in the alternative, which was whether the undisputed facts show that the state cannot prove its claim. And there, the facts were clearly disputed.

The state disputed whether she had accelerated uh when she hit the pedestrian. There were, there were disputes here, of course, at trial, we're going to dispute a lot of facts if it gets to a trial.

But for purposes of this motion, we can take all of the state's factual assertions as undisputed, but they simply have not claimed that they can prove he had a sub subjective awareness of a substantial risk that the firearm had live ammunition in it. The second thing the state says, and they've said this a few times.

Now, your honor. They say, well, if he had that knowledge, it would be second degree murder. Ok.

So a few things on that one, they're just wrong about that second degree murder requires a strong probability of death. If he, if he had it, if, if he knew there was a strong probability that there would be live ammunition in the gun and he fired it and pulled the trigger, which of course we dispute that would be grounds for a second degree murder charge. But substantial risk is a lesser standard. There's a significant delta between substantial risk and strong probability. So what they need to prove for this charge is that there's a substance that he was subjectively aware of a substantial risk that the firearm contained ammunition.

They don't even, no, no. That's, that's the defense argument.

Of course, that Alec Baldwin had to be aware of a subs subjectively aware of a substantial, I always forget to do this. So that's the, uh, that's the defense argument that Alec Baldwin needs to have had a subjective awareness of a substantial risk that the gun had ammo in it. That's not the legal standard. That's not what the statute of the jury instructions say.

The statute, New Mexico Statute and jury instructions on involuntary manslaughter say that Alec Baldwin had to be aware of a substantial risk that his conduct could cause result in death or serious bodily injury doesn't it's not specific to ammo in the gun.

He knows he's holding a real gun. He knows he didn't check to make sure there's no ammo in the gun. So you're holding a real gun. You don't know if there's live ammo in it or not. You pointed directly at another human being, you cock the hammer, you press the trigger.

Are you creating a substantial risk of death or serious bodily injury on those facts? Whether or not, you know, for certain, whether or not that there's a real ground in the gun.

Of course, this is just the defense doing its job, but it felt like he was misstating the Mexico law there even claim they can prove that that's why it's not involuntary murder, uh, murder, involuntary manslaughter. The other point on that your honor is that there's no rule that says any given factual scenario has to be able to satisfy every predation of homicide.

I mean, there are certain scenarios that are murder or nothing. Um, based on the facts and you know, even if they were correct, which they're not about the second degree murder point that would not establish they can show involuntary manslaughter without showing anything about his subjective awareness with respect to the risk of live ammunition. What's really, I think telling about the second degree murder argument is what I alluded to earlier, which is that argument shows that the state does not contend it can prove that he was subjectively aware of a substantial risk of the firearm contained live ammunition. They said it in black and white, we would have charged him with second degree murder if that's what we thought, they can't prove it, they don't pretend to prove it as a logical matter. Now, he keeps coming back to the same point over and over again.

And that's, that just shows the weakness of his argument.

They simply cannot prove the legal elements of this offense. The last point they make your honor is they refer to a bunch of other alleged actions by Mr Baldwin. And they say that those alleged actions are enough to satisfy the elements of the offense. So there's, there's two things to say about that. One, none of those alleged actions pose a substantial risk to the life of another person.

If the gun is not loaded with live ammunition, they say he knew it was a real gun, ok? They say he pointed it and pulled the trigger.

They say he didn't participate in a safety check again. This is not a civil suit for under the ordinary negligence standard. This is not a suit for violation of the S A guidelines.

This is an involuntary manslaughter charge. And under this state's law that requires subjective awareness that what he's doing poses a substantial risk that it could kill somebody pointing and pulling a trigger when you have no awareness that the gun has live ammo in it, that there's no risk that it has live ammunition and it does not pose that risk.

Admittedly, this is an unusual case. Most people, I'm gonna rewind that because I want to hear that again. Let's see if I can.

I want to hear this again. Maybe they, maybe my editors can use this as a short, he's saying that pointing what you know, to be a real gun at another human being without checking to see if it's loaded, cocking the hammer, pressing the trigger, dropping the hammer on the chamber. That that's not creating a substantial risk of death or serious bodily injury to that person can't be involuntary manslaughter unless you know, for a fact, there's a round in the gun. Let's hear that again.

Pull the trigger.

They say he didn't participate in a safety check again. This is not a civil suit for under the ordinary negligence standard. This is not a suit for violation of the S A guidelines. This is an involuntary manslaughter charge.

And under this state's law that requires subjective awareness that what he's doing poses a substantial risk that it could kill somebody pointing and pulling the trigger when you have no awareness that the gun has live ammo in it, that there's no risk that it has live ammunition and it does not pose that risk. Good luck. Good luck with that argument.

Admittedly, this is an unusual case, most people when they encounter a gun in their home or somewhere have reason to believe it might have ammunition because ammunition typically goes with firearms, they're often preloaded with ammunition. In the typical defendant case, they're gonna know that. But the reason the state won't allege that here is because it was a movie set and this was a prompt.

And he was told by the people responsible for it that it was a cold gun.

And the state told the jury in order to secure a conviction of MS Gutierrez that everyone on set believed it was empty. They told them that they cannot come into this trial and say that he was subjectively aware and to their credit. That's why they're not arguing that because they can't, they know that's not true and they know it would contradict what they said. So those are the three arguments I I want to briefly and I just touched on it, talk about their prior representations. As I said, I don't think the court to resolve this motion in our favor even needs to get into that because I think the state has effectively conceded in their opposition brief that he, they cannot prove that he was subjectively aware of a substantial risk of the firearm contained live ammunition. I think that's enough.

But if the court does get into those prior representations, we've given the court a number of federal cases saying that it's a due process violation for prosecutors to take inconsistent views of the facts in two different cases arising out of the same event. Of course, there's exceptions, if new evidence arises.

For example, if they got an acquittal in the first case, and they realize no, we were wrong about that.

We're gonna take the jury's views to heart and this is we're gonna reassess our understanding of the evidence. That's not what happened here. They used a series of representations to secure a conviction of a person and they sort of suddenly come into this court and say they're, they're free to walk away from those and adopt totally factually inconsistent positions. I, I was head of a prosecutor's office for three years right across the border from El Paso to Austin. And I can't imagine us ever saying in a court filing, we can take diametrically opposed positions on the facts of two criminal defendants.

I would never have let an A usa do that.

It just, we, we, we quoted them in our brief and I, I won't go on extended about all the ways in which what they're saying now is inconsistent but just a couple your honor in their opening argument. And this is an exhibit f of our motions in this case. They told the Gutierrez jury in opening that the prospect of live ammunition on that set was incomprehensible. You can't swear that with saying that he had a subjective awareness that what he was doing could kill somebody.

You were not comprehensive awareness. They said it's a hard and fast industry rule that live ammunition should be miles away from a film set at all times. They said the gun was checked right before it was handed to him.

This was in summation. M Morrissey told the jury in order to secure a conviction of somebody that when it, when halls announced cold gun, that led everyone to believe the gun contained only dummy rounds.

She said the crew didn't believe there were live rounds on set. They believed that she was going to do her job. They believed that she did her job. She said, imagine I hand you a gun and I tell you, it's basically empty. And I walk away when in fact, I put live ammunition on that, none of that is consistent with saying Mr Baldwin had any subjective awareness that anything he did with that gun could hurt somebody else.

It's totally inconsistent and they should not be in the business of adopting factually inconsistent positions, just a couple more your honor and then I'll get close to wrapping up my presentation.

So I know we have a lot to do on today. They've been inconsistent in other ways. In summation, the prosecution said it was completely foreseeable that Mr Baldwin would manipulate the gun the way he did. But now they're saying that what he did was so out of bounds as to satisfy the standard of criminal recklessness, even though they said it was totally foreseeable on a movie set that he would do that.

They said MS Gutierrez Reed had no supervisor when it comes to weapons and gun safety on the movie set. But now their claim is that Mr Baldwin should have micromanaged or at least I think that's their claim from these new producer theory allegations. So the state has been inconsistent. As I said, your honor.

I don't think you need to go there because I think they've made clear on the face of their opposition brief that they will not try to prove that he had a subjective awareness of a substantial risk that the gun was loaded. They just don't think they need to prove that. And they said, well, we would have charged him with second degree murder if that's what we thought we had to prove or if that's what we thought he did two other quick ones, they don't think they have a lot of their brief.

Your honor is focused on the S A guidelines and it's a very, very strange sequence of arguments because they spend a number of pages saying that he was supposed to attend the check under. It's, it's like rule 12 of the S A guidelines that are in the, in the record. But I mean, if you just look at the face of this rule, it, it says the actor may attend the check and if you look at the testimony they solicited from their own expert carpenter at Juts Reed's trial, he said this is just a dog and pony show or it's to give a warm and fuzzy feeling to the actor.

Its, it's not necessary and then you get about halfway through their brief and all of a sudden they say, well, yeah, it's true.

They don't actually require this. But, but this isn't a trial under the S A guidelines. I mean, all that's right. But I, I, the S A guidelines are totally irrelevant to this.

I mean, whether he, he did the thing he, he can elect to do under the S A guidelines, has nothing to do with his subjective awareness that that gun in his hand could kill somebody. They also say, well, he's different than every other person on that set.

Every other producer because he had the gun in his hand. He's not different in the respect that matters for this element.

Which is, did he know that the gun in his hand could kill somebody if anybody on that set knew the gun in his hand could kill somebody. They would have said, oh, stop, this is crazy. And, and that gets, I think to my final point before I, I briefly address this new producer.

Well, if, if anyone on the set had known that he was gonna point that gun directly at Helena Hutchins, they would have said stop, that wasn't in anybody's control, but Alec Baldwin's control and of course, the sad guidelines are relevant, they're relevant because they enumerate the ways in which a gun is dangerous and that it should never be pointed at anybody. He was aware of those rules had been for decades and he did it anyway. Recklessness is the knowing disregard of a risk, an unjustified risk of death or serious bodily injury. We know he was aware of the risk of pointing a gun directly at another person because it's in the sad guidelines.

And we know he was taught the sad guidelines. So of course they're relevant.

He's not charged with the crime of violating S A guidelines.

But the guidelines go to his mental state. Some theory which is that each of the actions, your honor that they say shows his recklessness and shows that they can satisfy the elements of the offense, pointing the gun allegedly at somebody and pulling the trigger, uh not attending a safety check, who knew it was a real gun. All those alleged facts that they assert in their motion. It's not only that they don't go to the, they don't satisfy the element of subjective awareness. It's that they cut exactly the other way.

No one thinks Mr Baldwin or anyone else on the set wanted to hurt anybody. The fact that they assert some of this we can test but the fact that they assert that he was pointing and pulling the trigger that confirms that he had no subjective awareness that there was a live round in the gun. No one thinks he wanted to hurt anybody on the set.

The facts, they cite as satisfying their burden under that element.

Show exactly the opposite. They show that they absolutely cannot show that he had a subjective awareness that that gun could kill somebody.

There's no one thinks he would have pointed and pulled the trigger if he knew that if he knew there was any risk with that. So this is again, and this is so funny, but again, to analogize back to my drunk driving example, right? So somebody gets drunk at a bar, they drive home, they run over an old lady in the crosswalk and killer. Ok. And they're charged with involuntary manslaughter.

This argument right now is akin to the defense lawyer for the drunk driver saying we can't find him guilty of involuntary manslaughter of that old lady in the crosswalk because the only reason he was driving drunk is because he didn't wanna, he obviously didn't have any subjective belief that he could hurt somebody or he would have called an Uber. So, I mean, you, you can tell by his own conduct, it can have been the involuntary manslaughter conduct, invalidate, invalidates the criminal charge of involuntary manslaughter. So the facts they cite show exactly the opposite of what they cite them for last point, your honor.

They've raised this new producer theory. Uh, it's not totally clear to me exactly what they're saying, but I think they're saying one of two things the first one is they might be alleging some sort of supervisory liability, even if Mr Baldwin had no awareness. He, he, he, he was negligent in supervising.

Um, MS Gutierrez read there has a ton of factual problems with that.

That wasn't his responsibility, but the, those are not relevant for this motion. What's relevant here is that there is no supervisory liability, criminal statute.

You can't establish the mens rea the subjective awareness based on a supervisory theory that can't possibly work. The other thing they might be saying is that he should have known, um he should have known the gun was loaded or something. You know, they haven't articulated this but seems to be what they're saying. But again, it's, it's not that standard. He must be subjectively aware, he must have subjective knowledge of the risk and it, that's clear as day and Henley that decision is controlling.

Um And for, for that reason, they can't beat their burden on us. So we, we, we re uh wasser time for rebuttal, of course, but we respectfully ask this court to dismiss these charges because Mr Baldwin is innocent as a matter of law.

Thank you. All right. Before the um state response, I have a couple of questions over some of what you presented. So you said that uh that you can take the undisputed facts under F and F and I'm interpreting that to mean that you can ignore the disputed facts.

And I don't, I don't read full and want to be that no, your honor.

The way I would describe it is you give the state everything they're alleging. So some of those facts are undisputed and some of those facts may, may be disputed. So for example, there's a dispute about whether he pulled the trigger.

Give the state that not obviously not at the trial, but for the purposes of this motion give the state those disputed facts assume they can prove the way.

Um Pacheco describes it is, is there a reasonable probability that they can obtain evidence to prove those elements? So if they, you know, as long as it's not totally ridiculous, if they say this is a disputed fact, we think he pulled the trigger. Give them that for the purpose of the full and font motion, can they prove the elements even with that? And our submission is that no, they cannot because they don't even attempt to allege that he had a subjective awareness of a substantial risk that that firearm was loaded with live ammunition.

So give them everything else they say, give them the disputed facts. They don't dispute that it's clear on the face pages 14 and 15 of their op they do not dispute that. What about the disputed facts? You talked about that? They raised additional facts. What about all the case law that says if you have disputed facts? It's for the fact finder, it is not for the court, your honor.

That's true.

Only where the disputed facts if resolved by the fact finder in favor of the state could satisfy the elements of the offense. Our submission today is that assume the fact finder resolves every disputed fact in the state's favor. They do not contend he was subjectively aware that the gun in his hand could kill somebody because they don't contend that he was subjectively aware that there was any substantial risk that it had live ammunition in it.

So give them everything else. They say give them, they pulled the trigger, give them, he didn't attend the safety check. Give them all that for the purpose of this motion.

Assume the jury resolves all of that in their favor.

They still can't meet the elements of the offense. And that is the essence of a fool. And F I would call it a Pacheco motion because Pacheco really refined the standard. But that's the essence of the motion presented to the court. You know, one of the law, self defense members, uh one of the law of self defense members in the in the member chat is mentioning that uh you know, Baldwin new guns are dangerous because he's on a gun control. He's on the board of a gun control organization.

And it just made me think, you know, here they're saying it's not the gun that's dangerous. You can point the gun at Helena Hutchins and cock the hammer and pull the trigger without making sure there's no ammo in the gun.

As long as you're not aware that there's actually ammo in the gun. That's all fine. But I noticed that Alec Baldwin's not on the board of an AMMO control organization. He doesn't say guns are fine.

How about own all the guns you want? Second Amendment? Uh, it's ammo that we need to control. That's what I'm worried about.

It's the ammo, that's the danger, not the gun, the gun is fine, just a thought right now.

All right. Well, let me read from Henley because you read a certain portion of Henley, but there's more to Henley and it says criminal negligence required, required for involuntary manslaughter. For a jury instruction includes the concept of recklessness in which a defendant consciously disregards a substantial and unjustifiable risk that harm will result from misconduct. The uniform jury instruction on criminal negligence incorporates this definition, defining criminal negligence as existing when a person acts with willful disregard of the rights or safety of others and in a manner which endangers any person or property.

Ug I 14 133. Likewise, the instruction on involuntary manslaughter states that the defendant should have known of the danger involved by his or her actions. 14, 231 to be convicted of involuntary manslaughter.

The defendant must have been aware of the risk caused by his or her conduct and continued to act. So you're I'm curious as to how you're narrowing that because they're broadening that. And they're saying, look at all this other evidence that shows that he should have known. Number one, he had a bad armor that he's responsible for hiring.

He should have known that she was, that she was a bad armor. Number two.

he, he was aware that, um, um, halls per periodically checked the gun which, which implies that he also knew that he didn't check the gun from time to time. Um You know, I'm, I'm trying to remember what else. Um, the, the, the sad guidelines that they don't completely rely on.

And you, I think you said that they rely on rely, uh if I, if you said completely, they rely on them in part and they're saying that as an actor, um, he, you know, despite des, despite all that other, um, information that as an actor, he is not supposed to be pointing a gun at someone.

Boom. And, um, there's no need to use the gun and that he, that, that, that he, he pulled the trigger when he was pointing a gun that he didn't need to point point to. So I'm curious as to how you have limited it to, he has no knowledge because he got to rely on his armor. He got to rely on David Halls and you're ignoring all this other information that circumstantially, which is allowed, would indicate these elements.

And that seems to be the core of what the jury is going to decide.

And I'm, I'm not clear on how you're reconciling these kind of cases. The defendant is not in fact myriad which you rely on very heavily.

It says, um state versus m defendant's argument, both below and on appeal amounts to a disagreement as to how the fact finder should interpret the facts. Alleged such interpretations benefit from the opportunity to observe the testament of witnesses, judge their credibility with the evidence and hear the party's arguments after the close of evidence. As a jury would have such contested facts.

Questions of fact and criminal cases rest within the exclusive province of the jurors. And then also in U autumn paragraph, that was 17 in paragraph 18. Furthermore, defendant's knowledge of intent generally presents a question of fact for the jury to decide. Um So to me and you did acknowledge that, that they added that they have additional facts and under the case law that I'm reading additional facts equal 10 equal disputed facts.

And that, and if you have disputed facts, you don't get F and F and these additional facts uh are disputed facts regardless of whether the state says, well, these other ones we dispute. Now, I'm just concentrating on the additional ones. And to me, it seems that this is at the core uh whether the jury believes your facts about the Armor and David Halls and that he had a reason to be able to rely on them and the States alleged facts that he was a producer.

He ha he, he, he knew about, he should have known about the armor.

All these things. I'm not getting into whether it's true or false. I'm just wondering how you're reconciling these things. Let me take a stab at that, your honor.

And let me give you the short answer and then the slightly longer answer from both case law and the record, the short answer is add up all the facts that they say are disputed. Assume they win those. It still doesn't meet the legal elements of the offense.

So you can imagine even so uh folks before, because we're behind a bit, I'm gonna move it up to one and a quarter speed. I should have done this earlier. My apologies, but that's why people will sound like they're talking faster because they are because of me. It's easier cases than this.

Um where something ridiculous, you know, there's a murder, there's a murder charge, but the person's not dead and no matter what else is disputed, they're obviously not gonna be able to prove a murder charge.

If the person is not dead. It doesn't matter if there's disputed facts in this case.

And let me pick up on Henley, your honor. Quoted the carry over paragraph from pages 107 to 108 in the Pacific Reporter, the very next sentence. The first full paragraph on page 108 gives the standard. That's at the heart of our motion. It says our case law has long interpreted the requirement of subjective knowledge into the integrated I'm sorry, the requirement of subjective knowledge into the showing of criminal negligence required by our involuntary manslaughter statute.

La later in the same paragraph, it says criminal negligence in the context of involuntary manslaughter requires subjective knowledge by the defendant of the danger or risk.

So the parts that your honor quoted are the model instruction. You know, we don't take issue with any of that.

They may also have to prove objective knowledge, which is the should have known standard. But the subjective component, whether it's an independent component or part of what willful disregard and conscious disregard means in this context, it's clearly a requirement of the statute. I don't hear the state to disagree with this point. I mean, they can read the the case just as well as anybody and I don't hear them to disagree that subjective knowledge is a requirement under the statute.

Now, your honor asked about these different factual allegations, whether the hall's check was insufficient and so forth our submission is that even if all those were true, just as a logical matter if he is not subjectively aware of a substantial risk that there's live ammunition in that gun.

And they don't allege he is, he cannot satisfy that element of the offense because he the only way that gun can kill somebody is if there's live, they initiated, they can allege whatever else they want about. He violated the t guidelines or he did this and that. But if they can't allege that he has a plausible, that there was a subs he was subjectively aware of a substantial risk that the firearm contained live ammunition. They simply cannot meet the elements of the offense.

I know your honor asked about Mereta that case. In the, in the quote your honor presented, it says generally intent is a question for the jury and we, we have no dispute with that. I mean, in most cases, recklessness, knowledge, intent, that's going to go to the jury unquestionably. But where the state cannot allege does not even purport to be able to prove an essential link, namely that the defendant understood that his actions at a substantial risk of hurting somebody else.

It should not go to the jury. The rule 60, the, the rule uh 65601 B standard is there because the judge is a critical gateway on allowing defendants to be prosecuted for things that are not crimes. What they have alleged here is not a crime.

You cannot be guilty of voluntary manslaughter. If you had no awareness of a substantial risk that what you were doing could harm people. And in the case of a gun, in this very unusual case of a prop on a movie set or everyone according to the state believed it was empty. You cannot satisfy the mens rea for involuntary manslaughter.

Again, the, a, the analogy here would be that, uh, you can't convict someone of drunk driving, homicide, involuntary manslaughter for driving drunk and running granny over in the, in the crosswalk.

Unless you had substantial knowledge that there would be a granny in the crosswalk when you blew through the intersection. Not the strongest of arguments. Thank you. Stay responsible. Who is it? Carry your honor as a, as a preliminary matter? I want to ask the court, I know that the defendant filed a request for supplemental briefing kind of along with a supplemental brief yesterday and we provided our response to that at around midnight is the court permitting the additional briefing? I hear Mr Bash arguing the the the law and the facts that are in the additional briefing. So I just want to know what I'm responsible for.

No, I did not see the see that and it's late.

So, ok, your honor, can I just respond other than the brief mention of the producer theory? I don't think anything I argued had anything to do with the supplemental briefing. So it that he's, he's right. But, but that's important because he said the state's new theory of him being a producer judge, you even know about it. So it's not new uh because I believe it came out during the Gutierrez trial and as we indicated, uh in our response, here's what we're doing here's what we're doing today, what I received and what I set for, set for hearing. So a supplemental briefing that arrived yesterday is not on the table in my decision.

Understood.

Thank you. I'll go ahead and proceed with my love. The circumstantial evidence that the state intends to present that goes squarely to this issue is Mr Baldwin knew he had a real gun in his

hand. Uh Mr Baldwin specifically asked for the biggest gun that was available. Mr Baldwin knew and understood that dummy rounds look identical to live ammunition.

That's the foundation.

So before Mr Baldwin has ever even encountered training by MS Gutierrez, that's where we are. He then arrives to his training with MS Gutierrez and doesn't pay attention. Uh Not only did MS Gutierrez indicate that he didn't pay attention, MS Zachary actually took a video of him not paying attention and it's one of the exhibits that will be used in the destruction of evidence motion later today.

Uh So he decided not to pay attention during his training then and look anybody, anybody who looks at MS Gutierrez understands that MS Gutierrez hasn't been alive long enough to legally own firearms. So there has to be some, some question about is this person really qualified to have this job? Uh that any reasonable human being would, would, would have that concern.

And many of the crew members actually mentioned that to the producers. How can this lady be our armor she's like, in her early twenties. Um, so Mr Baldwin certainly understood that, uh, he had a bad armor. She wasn't doing proper safety checks.

His experience in the film industry, uh, will is absolutely circumstantial evidence that he knew that when she was doing these safety checks that she wasn't following the rules.

Absolutely. The court is right. He also understood that Mr Halls was not checking the gun with MS Gutierrez every single time we know that he knew that because that's what he said.

It's a law enforcement on October 21st. So we get to this point. Now, let's take into consideration that there are two other actors on set that Mr Baldwin can see dry firing their guns into the ground 10 times after the gun is handed to them by MS Gutierrez to ensure that every single round is inert. Are those actors on my witness list? No, do I have plenty of other witnesses who are going to come in and say we saw those people dry fire their guns into the ground every time she handed it to them.

Absolutely. Uh plenty of witnesses are going to testify to that and MS Gutierrez herself should be able to testify to that based upon the court's ruling. Uh because that certainly wouldn't be anything that she could assert her fifth to.

So that's where we find ourselves at this point in time. Now, what Mr Bash is telling the court whi which is absolutely false.

Uh, what he's telling the court is, unless this gun has a live round in it, it is completely harmless and he didn't realize that there was a lie around it. Patently false.

Mr Baldwin himself, as I recall, had a conversation with law enforcement and, and, and I may be wrong. Uh, I've read a lot of transcripts, he indicated an awareness that if he is handed a gun that has a blank round in it, but also has a barrel obstruction that is fatal that can kill someone and has historically killed people. I believe that that is the circumstance of the death of Brandon Lee that almost everybody who works in the film industry is familiar with.

So Mr Baldwin didn't necessarily have to know there's live ammunition in this gun.

He had to understand that the gun is real, real guns are dangerous dummies look exactly like live ammo, even if there's not a live round on set and she put a blank in instead of a dummy and the gun had a barrel obstruction. Helena Hutchins is dead. Boom. Well, put Carrie Morrissey, she's dead and she's dead because he didn't participate in the safety check. And listen, we agree and we have always agreed that under the S A guidelines which do not dictate New Mexico Law, the S A guidelines indicate that that is optional. He chose not to participate. And I'm sure that's a decision that he's grown to regret So he chose not to participate in that safety check.

Then he decided to point a gun at a human being, cock it when he wasn't told to cock it.

We had plenty of video of him cocking guns when he wasn't supposed to, when he hadn't been told to when the scene didn't call for it. And then of course, he pulled the trigger, killed a woman and seriously injured someone else.

So that's the landscape and the court is absolutely 100% correct that the, the defendant has spent pages and pages and pages and pages arguing. We don't agree, we don't agree to the facts. There, there, there are, there are really no stipulated facts.

The state isn't stipulating that in order for that gun to have to, to have killed someone, it had to have live live ammunition in it, everybody knows that's not true. Now, let me clear up, um, a couple of other issues. The reason that these safety rules exist, the entire reason that the s a safety bulletin number one exists is because of the risk that live ammunition could find its way on set.

Yep.

If there was absolutely no chance that live ammunition could ever find its way onto a movie set, why have these rules at all? Uh, you've got two actors standing right next to Mr Baldwin who certainly understand that there's AAA significant risk of live ammunition or they wouldn't be firing their guns into the ground right in front of him. Now, our expert, Brian Carpenter will testify and testified before the grand jury. And I think he even testified during the Gutierrez trial that as an armor, he himself has found live ammunition on a movie set.

So what, what Mr Bash alleges with, uh with regard to the distinction between involuntary manslaughter and second degree murder. Really, I don't think gets him where he needs to be if I

am an actor and I have reason to believe that I, I understand that there is a substantial risk that there is live ammunition on a movie set. And I take that gun and I point it at a person and I cock it and I pull the trigger that is second degree murder all day long. Uh We, we can argue about that um all morning, but that's not gonna change.

You know, I, I think that that where, where the parties disagree here. It is when, when Mr Bash was talking about the link, you know, the, the link uh between the subjective knowledge and the offense, the link between the conduct, the sub, the, the subjective knowledge and the offense. We disagree on what the link is.

Not only do we disagree on the vast majority of the facts.

We disagree on that link, uh the this motion by Mr Baldwin, um, absolutely cannot be granted by this court. There, there is a plethora of case law that says you can't do it and, and, and what is happening here, which is what, what, what frequently happens in this case is the defense attorneys are coming forward to the court and they're saying, um, they, they're making statements that are not at all based on the evidence or the future witness testimony. One of those statements that was given today, of course, is Mr Bash's statement, this gun can only kill someone if it's got live ammunition in it. Absolutely false. And Mr Baldwin knew that was false. So WW we, we need to simply rely on New Mexico Law.

We have an extraordinary amount of circumstantial evidence. Uh That goes directly to this point, some of that evidence you, you may see this afternoon because it's relevant to another motion.

Uh the court, if the court in Cerna, which is the unpublished case that, that the defense, uh I'm sorry that the state cited that the defense was certainly aware of. Uh they were aware of Cerna, they were aware of Gomez, they didn't cite him because they were hoping, I guess we wouldn't find him. Uh So, so when you look at Cerna, there's a video, there is a video of a person driving and a pedestrian stepping out in front of them. And the only dispute between the parties is exactly what Mr Bash is bringing to the court's attention today, which is, you know, with substantial risk.

How can you get there when you look at this video and all this lady, she wasn't speeding, all she did was just kind of make this turn uh and hits this pedestrian and for heaven's sakes, it was an accident. And in that circumstance, the court said no, there are disputed facts.

There are disputed facts here and we are asking the court to follow well established new Mexico law and deny the defendant's motion. Thank you, response reply, Mister Bash. Thank you your honor. Um Much of what the government just said is incorrect.

But as an umbrella point, much of what the government just said is waived. It appears nowhere in their opposition brief. The point about blanks, the point about what two other actors were doing on the set.

You know, there's been a lot of sandbagging in this case, it's not proper for when we make an important dispositive motion, the state not to present those arguments in their written submission and then to debut them for the first time in argument, the arguments are wrong and I'm happy to address them and I will in a second.

But a lot of the points you just heard are not found in the brief with sake and that you can't raise something, an oral motion for the first time without pre doing it. So let me take each of those points. In turn, MS Morrissey went over a lot of their allegations and some of them are just have obviously no bearing on the issue before the court, whether he selected the biggest gun, whether MS Gutierrez looked too young for the job that has no bearing on whether he had a subjective knowledge of a substantial risk that the gun in his hand could kill somebody. They've given a lot of facts.

Let's give them all those facts. Let's give them all the jump balls.

Let's say that they're right about everything they say that does not establish the elements of the offense. Um And we've been over some of those in the, in the opening presentation that he had the gun in his hand that he knew dummies look like live rounds. The fact remains that they told a jury to secure a conviction that everyone on that set did not believe there were live rounds in that gun and that it was inconceivable there could be live ammunition on that set and everyone includes Mr Baldwin. Now they've raised two arguments, I guess they've realized that they have a big problem because if they can't show that he had a subjective awareness that that firearm is dangerous in his hand, they can't prove their case.

And so they've raised two arguments which were not in the opposition brief. Someone can correct me if I'm wrong.

I'm doing it from memory. But I don't remember seeing these arguments in the opposition brief first, they say that Mr Baldwin saw two actors dry firing their guns, but they're not going to call those actors. But they saw it. I don't see that anywhere in the brief second.

They say that, um, you, it's not true that you need a live round. In certain circumstances. A blank could kill someone because there could be an obstruction in the barrel and it could go off.

But no one contends your honor that there were, he thought there was a substantial risk that, that gun contained blanks because as everybody knows, and I'm sure the court is very familiar after sitting through the Gutierrez trial, they look completely different than dummy rounds. Dummy rounds are the ones that look like live rounds. Blanks look totally different.

And I, I'm not aware the state has ever contended that Mr Baldwin was aware of a substantial risk that Mr Falls or Ermis Gutierrez loaded blanks into that gun, which looked totally different. It's not even remotely realistic that that was a risk after two professionals loaded the gun that

they actually loaded it with blanks. So that, that is an argument that the state just made up an argument.

They didn't even wait, wait. It's, it's, it's not credible that experts would confuse blanks and dummy rounds.

When they managed to confuse blanks and dummies with live ammo. We know that happened live ammo doesn't look different.

And the way they inspected the gun was to open the cylinder gate and spin the cylinder and look at the rear of the cartridge. The cartridges were not removed from the gun and from the rear blanks and dummies can look exactly the same included in the written briefs and it's completely preposterous in light of the reality of what blanks look like.

It's an argument to try to get past this positive motion that doesn't actually have any weight. I would just add that. I think they would have a huge problem with the foreseeability element if their theory was that he foresaw that there could have been an obstruction that could have injured somebody. But actually, what happened was totally different. And so he's guilty, I don't think they could satisfy foreseeability, but at any rate, the arguments waived.

And it's factually ludicrous, given that these things look different, there's no way he could have had a subjective awareness that they were, there was a risk, they were putting blanks into that gun. Um M MS Morsy referred to the S A guidelines and they say we have these prophylactic rules under the S A guidelines because you know, there's some chance of live issue.

And so you can never say there's no chance again, let, let's assume she's right about all that. I, I don't want to get into whether she's right about the purpose of the S A guidelines.

The standard is not no chance. The standard is a substantial risk. They, you heard it again, they can't argue substantial risk. They can't argue subjective awareness of a substantial risk. They would have charged second degree murder if they thought they could argue it.

So they moved the goalpost and they moved the goalpost to, well, we can't say there's no chance.

I mean, there's always some 0.0001% chance of anything happening. But that's way far away from the element of this offense, which is substantial risk. She doesn't argue that properly because she can't work that. She, she changed the goalpost.

Um, I heard her say something about the second degree murder. Well, you're just wrong about that. Uh, amounts of case law say you're wrong.

There was no case law cited. There was no logical reason given second degree murder in the state requires a substantial probability if the state could allege that Mr Baldwin thought there

was a substantial probability that there was live ammunition in the gun and it could satisfy all the other elements. That would be a different story.

But what we're saying is they haven't even alleged a substantial risk.

There's a big delta between strong possibility and substantial risk. And if they can't even allege that, then it's not involuntary manslaughter. It's an accident for which he's not criminally liable.

Um, um, I heard MS Morrisey say that there's a plethora of case law that says you can't do a F and font motion in his circumstances.

There's not, they don't cite it. They just keep saying there's a plethora of case law. Mora Morada stands for the exact opposite proposition.

It says generally they're not going to be successful.

We have no truck with that. Of course, generally, the prosecutors are going to be able to give intent to the jury. But this is an extraordinary case where they're charging somebody with an accident based on a movie prop when they told another jury that everyone thought it didn't have live bullets in it.

This is an unusual case and more would have had one sentence of analysis if the rule was, you can't succeed on a F and F motion on a question of intent, it didn't, it went very carefully through the allegations and there was an attach affidavit and it went very carefully through all that and said, ok, the state has enough here to prove the case. So you're wrong about that. And finally, I mean, Morsy says, I know why this, the defense didn't cite Sarno because they, they're scared of it. I mean, it's an unpublished nonpresidential decision that alternatively applies a test that the court of appeals rejected in two published decisions.

OK.

So it's not controlling and it does alternatively apply the correct standard, which is what the undisputed facts allow the state to prove. And I mean, it was just a case with completely different facts. She said it's exactly the same thing. It's not one of the facts disputed in that case, which was a particular case or a reckless driving case was whether the defendant had accelerated at an unreasonable rate right before she hit the pedestrian. That was an actual factual dispute that goes to recklessness and that could be dispositive.

In this case, the state does not claim that he had a subjective awareness of a substantial risk that the firearm contained live ammunition.

It's not disputed for everything that MS Morsy just said they are not disputing that she was candid. She did not say here and say they can dispute that. There's a reason she didn't, they know they can't prove that they know it would be inconsistent with what they told the jury to

get a conviction of somebody else. They can't prove that if they can't prove that they can't establish the elements of the offense.

And with that all sit down your own. All right, what makes a following ruling? The court denies the full and motion of the defense.

The court finds that first of all, there does exist, uh, disputed facts before the court that are not capable of dismissal as a matter of law.

The disputed facts are probably before the jury. Um, the involuntary manslaughter talks about, um, the defendant should have known of the danger. And I think that's really at the core of, of, um, what, what is argued that Mr Bash is saying there's no way he, he could have known. So there's no way he should have known. And MS Morrissey is saying here is, here is some circumstantial evidence as to how or why Mr Baldwin should have known. And by the way, just as a clarification point, folks, uh we, we're hearing here about circumstantial evidence.

It's common for people to um perceive circumstantial evidence as somehow being inferior to direct evidence.

Like eyewitness testimony, for example, uh circumstantial evidence is, is just as uh capable and compelling as direct evidence sometimes more. So uh often eyewitness testimony is the weakest kind of evidence and that's direct evidence. So there's nothing defective about circum or uh or deficient about circumstantial evidence.

Uh by any means, circumstantial evidence is perfectly good evidence.

And by the way, any time we're talking about a person's mental state, we're always talking about circumstance. We don't have mind reading machines, we can't look into someone's brain and have direct evidence of what their state of mind is. We're almost always talking about circumstantial evidence. We're making inferences about their mental state from circumstantial evidence.

Um With respect to the um uh inconsistent theories of prosecution, you didn't really uh bear that out. I don't think you've met your burden. I think that the uh 10th circuit uh us versus the Negro um is on point where, um uh it's, it's gotta go to the core uh reveal on due process claim.

It's gotta go to the core and that it's gotta be, uh which is so, uh inherently contradictory. And I, I think that they're, I think part of what the state's relying on is, um, what, what Miss uh Gutierrez didn't, didn't do.

Ok. Um And the court will prepare that order as well. I will see you back here at one o'clock.

Does that work for everyone? Your honor before we reach this? I just have a question. The defense mentioned that I'm gonna be arguing that from that a motion.

Um We have three witnesses. The defense indicated they have witnesses.

May we ask who they plan to call for that? I don't know they witness. Yes, your honor. As always, it somewhat depends in part on who the state calls it may be that we don't have any witnesses if they're calling the same witnesses.

Um So we notified um Corporal Hancock, Mr Ziegler, um and Mr Hague, but if that's the same set of witnesses that the state's calling, we of course will be efficient with the court's time and not recall people. They are your honor.

Same witnesses. OK.

Then we will. Yeah.

All right. Thank you, Ron. Thank you real real quick.

Um Mr Spiro, are you referring to Michael Haig or Luke Haig? Uh Luke? Ok.

OK. All right. Thank you. All right. Thank you.

Thank you, wherever he says. All right, folks, we are in recess. Now.

I had tentatively planned to uh to do a part one and part two show, but I don't think I will. Um The judge is indicating she'll be back in 40 minutes and uh and we got 1000 people here. So I think we can talk about various aspects of the case for 40 minutes. I'll check out the various comments and questions.

Thanks for joining School of the American rifle. This is part two of. Oh, sorry, that is not appropriate. What happened? Did the, did the feed just end? Well, if the feed just ended, I might just have to do a part two show.

Let me see. Um or did I just hit the wrong button? Uh No, the, the, the, ok, the state just rescheduled for part two.

So I guess we are doing a part two. Yeah, I was, uh, that was uh an armor's youtube video on A, on A R rifles. So pretty good too.

Um In fact, let me, let me see if it's still up. I, I recommend their stuff.

School of the American rifle. Um They do pretty good stuff. So check them out on youtube.

School of the American rifle. I was, uh, I was looking at, uh, they were doing an autopsy of uh, a couple of Palmetto State Armory A R rifles.

Very informative. I, I own several Palmetto State Armory A R rifles.

They're, they're a great bargain. So, of course, I was curious as to what the, the quality checks might reveal. All right. So folks, I'm actually gonna take a break for a few minutes, hit the restroom, grab a sandwich for lunch and I'll come back for part two.

Part two is already scheduled on youtube and I will, um, the state is saying one o'clock mountain time, which is in about 36 minutes, 35 minutes. So we'll be back for that. Um, with that said, I will, uh, oh, you know what, let me take a quick look at the member comments here.

I don't know if I'll be able to get to all of them. I'll try to address the substantive ones. Take a few minutes to do that. That's a law of self defense.com/members. Anybody can become a member for 99 cents, folks, 99 cents for a two week law, self defense member membership.

Um You'll be immediately be emailed instructions how to join us on the member live stream and the member chat where you get your questions addressed for free.

Uh, or if you're on youtube, you could try a, uh, $10 Super Chat. Let me check the Super Chats actually. Uh, and there is one. So let me address it real quick and then I'll get to the member questions, Derna, 1804 $10 Super Chat. Thank you very much.

Derna says every time Baldwin is flagging someone with a firearm in these clips.

Could that be? Oh, that was from yesterday. I already addressed that. All right. So just the members then. Welcome to our newest member, Danny.

Yeah, Danny.

Danny, uh got my instructions on how to join us in the live stream. So that's great. Uh Let's see. Pop pop pop. Um just checking, checking, checking.

Yeah, I know.

Yeah, during the interrogation of Hannah Guterres by Alexandra detective Alexandra Hancock, she revealed to Jason Bowles that she used to be a Hooters waitress and he got very interested in Detective Hancock after he learned that a Hooters waitress. Hm. He was a lot more interested in that than when his client was being interrogated. Uh psycho boy says Andrew new video review for you, Chicago man chases out a burglar with an iron pan.

I think it was an aluminum pan. I saw that video clip. It had a dent in it afterwards. That was a large cast iron pan.

There would have been no dent, uh, from hitting someone in the head with it. I'll see if I can check that out.

Oh, and you sent the link? Good. Ok. So I'll see if I can. Uh, I did see the, uh, the video on, on Twitter and, uh, I think I, I bookmarked it. So I'll, I'll, I'll put that on the list for things to maybe address next week. Um, cle boy says with the DW, I example of accidentally killing while DW, I saw a reckless vehicular homicide, reckless manslaughter could baldwin claim, non-intentional intoxication type of thing with DW.

I, the trouble is I, I believe his legal liability is fixed when he knows he's holding a real gun and he knows he's pointing it at directly at another person in violation of safety rules.

He knows he hasn't insured. There's no, I, I on the gun and he knows he's cocking the hammer and depressing the trigger. So, what's the non, that's all intentional on his part? So I don't see the non-intentional for this to be an accident in the legal sense. Um, and I, and I, I, I spoke to this when I, I did my first legal analysis of this October 21st, 2021 shooting of Helena Hutchins by Alec Baldwin.

I did my first legal analysis the next day, October 22nd, 2021. And I said, then if it turns out there are facts that this was a legitimate, a genuine accident, there is no legal liability. But what would a genuine accident look like? It would look like a piece of the set collapsed onto Alec Baldwin and that's what's induced the discharge of the gun, but nothing like that happened here.

That would be unintentional. Uh Let's see, Phil says a firearm doesn't kill a person, pointing the firearm at another person and pulling the trigger, kills that person. Yep. Let's see, pop, pop, pop, pop, checking, checking the, the use immunity went against the state.

Uh in the sense that the judge said I'm not gonna just grant use immunity. Now, in a pretrial hearing when Hannah Guterres is called as a witness, if she's asked a question by the state and she refuses to answer based on the fifth amendment I'll make a call then whether or not the Fifth Amendment applies.

Uh is my sense of what the judge ruled. It was a little ambiguous because there was an exchange with Kerri Morrissey and the judge after the judge issued her kind of ambiguous ruling where it seemed to me, uh Carrie Morrissey was saying, hey, but if I call her, if I call Hannah Guterres as a witness and I ask her a question, there are questions I can ask the answers to which would not fall within fifth amendment privilege or if they do, we can discuss you immunity in the moment. My sense was the judge was saying yes.

Now that said, uh, it's pretty common for judges to say, hey, if you're thinking of calling a witness and we know ahead of time that witness is just gonna plead the fifth, I'm not gonna bother letting you call them because it would be pointless. So maybe that's where we're at here. But, but frankly, it was left ambiguous to me.

Certainly, the judge did not grant, denied the state's pretrial motion request for use immunity of hanukah terrorists. No question about that. Ah, lets see.

Pop, pop, pop a quote from John Adams Paul in Florida. Quote, facts are stubborn things and whatever may be our wishes or inclinations or the dictates of our passion. They cannot alter the state of facts and evidence. John Adams, I can think of a couple of Richard Feynman quotes that would fit well there too.

Uh, let's see. Phil says, uh, how does this analysis jive with pointing a replica firearm at someone being pretty well accepted as an objectively reasonable assumption of a lethal threat being presented for justifiable self defense? Uh I'm not sure what's being asked there. If someone's pointing a replica gun at you and you perceive it as a real gun, you're allowed to act, respond in self defense to reasonable appearances from there.

What's relevant is your mental state? Not the mental state of the person pointing the gun.

They may know it's a replica and they're, they may know they're not presenting a threat of death, a serious bodily injury. But for purposes of your self defense justification, what they're thinking doesn't matter what matters is your reasonable perception. Uh Jim asked Andrew, could the prosecution ask for greater included offenses being included as opposed to lesser included offenses. Lesser included offenses are generally, well, they're, they're known what they're, what they are because they're, that's documented ahead of time.

What's a lesser included offense of some higher level crime? And the parties are on notice that the lesser included offenses are open game, uh, greater included offenses. No, you can't go up the scale.

The, the highest you can go up the scale is what you were indicted for or if it wasn't an indictment and information, what whatever charge you were initially dragged in the court over. Let's see, uh, lawful to shoot says, I think this lawyer, the one we just saw Peter Bash for the defense could convince a weak jury to find Baldwin not guilty, which would be a travesty of justice. Uh, but that would, that, that's actually the, the state's position, the state's position is basically, uh, well, the defense can make all these arguments to the jury.

The defense argument is, we don't want to have to make these arguments to a jury. We want the judge to make find in our favor as a matter of law without it going to a jury.

Um Let's see, Phil asked, should any inference be made by the immediate court orders? The judge's decisions regarding the defense motions. It's just that trials coming up. It's only what, a couple of weeks away now. And uh I, the judge may not want to take time to do a lengthy order in response.

She's giving her answer now and probably these will, she's gonna reduce them to a, a written order. Uh, but they'll probably just be like one page paragraph each.

Uh use, use immunity was not uh ordered by the judge here.

So she denied the state motion. Uh, but I, I already stepped through that. All right folks. So at that point, I will remind all of you that was all the member questions.

I'll 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 know the law. So you're hard to convict as well.

We got 1000 people here. So I'll just remind everybody once more that you can get a copy, a free copy of our best selling book. The Law of self defense Principles at Law of self defense.com/free book.

Check it out on Amazon five stars, uh 1500 or so reviews, but don't buy it on Amazon. They'll charge you for the book and shipping and handling. We only ask you to cover the shipping and handling.

We give you the book for free at Law of self-defense.com/free book sets out explains in plain English how use of force law works. Most people say they read it in an afternoon. The biggest compliment we get on this book is that it's easy to read. It translates the Legalese into plain English.

We give it away folks.

Law of self-defense.com/free book. All right. So I'm gonna sign off, grab something to eat and I will be back at the top of the hour, uh a few minutes before the top of the hour, if I can manage it, the top of the hour is when the court comes back in the session, there's already a part two show scheduled in youtube and uh I'll throw it up on the uh the law of self defense live stream as well.

All right, folks until half an hour or so from now, 25 minutes from now.

Uh, I look forward to seeing all of you back then. Take care.