FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
6/14/2024 10:08 PM
KATHLEEN VIGIL CLERK OF THE COURT
Mariah Gonzales

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,

PLAINTIFF,

VS.

ALEXANDER RAE BALDWIN III,

DEFENDANT.

No. D-0101-CR-2024-0013
Judge Mary Marlowe Sommer

DEFENDANT ALEC BALDWIN'S REPLY IN SUPPORT OF
DEFENDANT'S MOTION FOR ORDER EXCLUDING DEFENSE WITNESSES

LEBLANC LAW LLC

Heather M. LeBlanc
823 Gold Ave. SW
Albuquerque, NM 87102
Tel: 505-331-7222
heather@leblanclawnm.com

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Luke Nikas (admitted *pro hac vice*)
Alex Spiro (admitted *pro hac vice*)
Michael Nosanchuk (admitted *pro hac vice*)
51 Madison Avenue, 22nd Floor
New York, NY 10010
Tel: 212-849-7000
lukenikas@quinnemanuel.com
alexspiro@quinnemanuel.com
michaelnosanchuk@quinnemanuel.com

Sara Clark (admitted *pro hac vice*)
700 Louisiana St., Ste. 3900
Houston, TX 77002
Tel: 713-221-7000
saraclark@quinnemanuel.com

Counsel for Alec Baldwin

Defendant Alexander R. Baldwin III, by and through undersigned counsel, hereby replies in support of his "Motion for Order Excluding Defense Witnesses" (June 3, 2024) ("Mot"). Defendant respectfully requests that this Court enter an order excluding defense witnesses in accordance with Defendant's Notice of Withdrawal of Defense Witnesses (filed June 2, 2024).

I. EXCLUSION IS THE APPROPRIATE REMEDY

In its response to Baldwin's Motion, the State argues that exclusion is not justified, citing to *State v. Harper*, 2011-NMSC-044, ¶ 17, 150 N.M. 745, 266 P.3d 25, and *State v. Le Mier*, 2017-NMSC-017, 394 P.3d 959. *See* "State's Response to Defendant's Motion to Exclude Witnesses" (June 4, 2024) ("Opp."), at 3. But while those cases lay out a general framework for courts to apply in determining whether exclusion is justified in specified circumstances (*see* Mot. 3-4), they "[do not] attempt to precisely delineate how trial courts are to exercise their discretionary authority in the varied cases over which they must preside." *Le Mier*, 2017-NMSC-017, ¶ 17; *see also id.*, ¶ 16 (noting that *Harper* "did not establish a rigid and mechanical analytic framework"). The takeaway from *Le Mier* is not that exclusion is warranted only where certain types of conduct are at issue or certain types of orders have been violated. The takeaway, rather, is that "trial courts shoulder the significant and important responsibility of ensuring the efficient administration of justice in the matters over which they preside." *Le Mier*, 2017-NMSC-017, ¶ 17. That is why the court in *Le Mier* "expressly authorize[s] . . . courts to utilize witness exclusion to proactively manage their dockets, achieve efficiency, and ensure that judicial resources—which are greatly limited—are not wasted." *Id.*, ¶ 19.

Under the specific circumstances set forth in Baldwin's motion, exclusion is the appropriate remedy. The parties filed their witness lists on May 6. That same day, the State moved to exclude nine of Baldwin's witnesses. Baldwin opposed, and the State filed a reply

arguing that the *same* nine witnesses should be excluded. On June 2, Baldwin conceded the State's requested relief as to five of the nine witnesses, and filed a Notice of Withdrawal of Witnesses to that effect. With the pending dispute resolved as to those five witnesses, Baldwin withdrew subpoenas for three of the witnesses and cancelled pretrial interviews that were scheduled for two of them. Only then did the State purport to withdraw its fully-briefed motion in an effort to undo its consequences, because it suddenly saw a strategic advantage in doing so. There is no basis to allow the State to do that.

The State does not attempt to argue that it would be prejudiced by the exclusion of witnesses the State *itself* tried to exclude a mere two days before Baldwin withdrew them from his witness list. Indeed, such an argument would be absurd given that the State had just argued that it had been prejudiced by the *inclusion* of those witnesses on Baldwin's witness list. *See* "State's Reply to the Defendant's Response to the State's Motion to Exclude Witnesses" (May 31, 2024), at 2 (arguing that the inclusion of said witnesses "has resulted in prejudice to the state"). Instead, the State argues that Baldwin's motion should be denied because *Baldwin* can't show prejudice. The State's initial argument—that Baldwin "has not even attempted to demonstrate how he is prejudiced" (Opp. 6)—is refuted by the State's admission, three pages later, that Baldwin *did* articulate the prejudice he would suffer if these witnesses are allowed to testify. Opp. 9 ("The defendant *claims it is prejudiced* because the pretrial interview deadline is June 5, 2024, and the defense cancelled other pretrial interviews of other defense witnesses as to whom the state initially objected, thereby leaving the defendant without time to reschedule the three witnesses whose pretrial interviews the defense cancelled.") (emphasis added). What the State means to say is that the Court *shouldn't recognize* the kind of prejudice Baldwin will suffer if the State gets its way. But the Court can, and should, recognize the prejudice Baldwin will suffer.

This incident underlying this prosecution occurred in October 2021. The State's investigation lasted for more than a year before it announced charges against Baldwin. By now, the State has had *years* to prepare its case against Baldwin and interview any witnesses who might be relevant to its investigation. And it has already been through this process once: The State's lead Special Prosecutor in this case recently finished trying a related case arising from the exact same events, in a trial where the State went through *thirteen* iterations of its witness list. The State has "the awesome investigative and prosecutorial powers of government" on its side, *Williams v. Florida*, 399 U.S. 78, 111–12 (1970) (Black, J., concurring in part and dissenting in part), and it has been pursuing Baldwin since long before Baldwin was even aware of it (after telling him that he would be notified well in advance of any charging decision). Baldwin, on the other hand, was indicted less than six months ago and has been preparing his defense in response to the *State's* prosecutorial decisions throughout this time. The State cannot move to exclude witnesses weeks before trial and cause Baldwin to rely on those decisions, only to withdraw that which has already been consented to once the State perceives some advantage in the way Baldwin acted in reliance on the State's decisions. If the Court allows this game to happen, it will never end. The State had years to prepare, it forfeited its right to call certain witnesses, and Baldwin relied on it. If the State is allowed to exploit Baldwin's reliance, he will be prejudiced.

The only fair remedy is exclusion. Relying on the State's representations, Baldwin was enticed into revealing some Defense strategy. An appropriate remedy needs to put Baldwin in the same, or as close to the same, position as he was in before his detrimental reliance on the State's representations. No remedy but exclusion can accomplish this. *See State v. Guerra*, 2012-NMSC-014, ¶ 33 ("Before resorting to preclusion, a trial judge should weigh not only the prejudicial effect

of noncompliance on the immediate case, but also the necessity to enforce the rule to preserve the integrity of the trial process.").

The State further argues that this issue can be remedied and prejudice to Baldwin cured by simply extending the pretrial interview deadline. *See* Opp. 9. Not so. We are three weeks from trial without time to conduct more substantive interviews in addition to the myriad of upcoming deadlines and trial preparations—particularly as the State continues to disclose critical evidence that should have been disclosed months ago. Extending the pretrial interview deadline in the final weeks before trial will not cure the problem, and will only cause further prejudice to Baldwin.

II. THE DOCTRINE OF JUDICIAL ESTOPPEL APPLIES HERE

The State also argues that judicial estoppel does not apply in criminal matters because it is a civil law doctrine. *See* Opp. 6. In support of its argument, the State cites to *State v. Arevalo*, 2002-NMCA-062, which addressed the use of collateral estoppel in a criminal proceeding. *See* Opp. 10. Collateral estoppel is an entirely different legal doctrine than judicial estoppel. The State mischaracterizes *Arevalo* as standing for the proposition that "New Mexico courts are reluctant to apply legal doctrines, like estoppel, from civil law to criminal law." Opp. 7 (citing *Arevalo* ¶ 20). Recently, the New Mexico Court of Appeals has signaled the importance of holding the State accountable to its prior statements or guarantees in criminal cases, applying civil law doctrines. For example, in *State v. Jurado*, ___-NMCA-___, ___ P.3d ___ (A-1-CA-40909, May 28, 2024), the State attempted to revoke a plea offer on which the defendant relied when he waived his constitutional right to a preliminary hearing. The Court of Appeals held that the defendant was "induced by the State's promise to cooperate and to suffer detriment in reliance on the State's promise by waiving his right to a preliminary hearing." *Id.* ¶ 15. "Therefore, specific performance of the agreement is the proper remedy … in the interest of fundamental fairness." *Id.* (internal

citation omitted); *see also State v. Bourland*, 1993-NMCA-117, 116 N.M. 349 (holding that the State may not withdraw a plea agreement not yet approved by the district court when the defendant has detrimentally relied on the agreement or the prosecution took unfair advantage). "Specific performance is an equitable remedy under contract law." *Kokoricha v. Est. of Keiner*, 2010-NMCA-053, ¶ 31, 148 N.M. 322, 329. "Specific performance is the actual accomplishment of a contract by a party bound to fulfill it, and is a means of compelling a party to do precisely what he ought to have done without being coerced by a court." *Guadalupe Cnty. Bd. of Educ. v. O'Bannon*, 1921-NMSC-008, ¶ 8, 26 N.M. 606. Yet, this civil law doctrine has been repeatedly applied in criminal law cases in New Mexico. Similarly, this Court has the ability to apply judicial estoppel against the State here to ensure that the Defendant is not, yet again, prejudiced by the State's gamesmanship.

Ultimately, this argument is not about whether the State's conduct is appropriate. It is about whether or not the State is estopped from its behavior on the issue of witness exclusion. The State filed a Motion to Exclude Witnesses. The Defense conceded and agreed to remove certain witnesses, relying on the State's representations and canceling witness interviews. This ultimately resulted in the Defense revealing some Defense strategy that, under any other circumstance, would not have been disclosed to the State. The Defense filed a Notice of Withdrawal. The State then reneged on its position, to the detriment of the Defendant, and withdrew its Motion to Exclude. Any attempt to blame the Defense for impropriety is a deflection of the State's responsibility for the circumstances that gave rise to this motion. The proper remedy is to permit the Defense to withdraw its own witnesses from its own witness list.

The State "submits that it has the discretion to withdraw its motion" to exclude witnesses. Opp. 9. That may be true in some circumstances, but not where Baldwin has detrimentally relied

on the State's original motion by partially consenting to the relief. Just as the State cannot retract a plea offer that a defendant has detrimentally relied on, the State here should not be permitted to stop Defendant from excluding Defense witnesses after Defense relied on State representations to the contrary. *See Jurado*, ___-NMCA-___, ¶ 15 (A-1-CA-40909, May 28, 2024) (holding that, where the defendant was induced by the State's promise, and detrimentally relied on that promise, the State may not then revoke the plea offer upon which defendant relied). To ensure fundamental fairness within the judicial system, this Court should exercise its discretion and grant Defendant's Motion to Exclude Defense Witnesses.

III. CONCLUSION

Applying judicial estoppel maintains the integrity of the judicial process. Defendant Baldwin respectfully requests that the Court exercise its discretion to do so, and enter an order excluding Defense witnesses.

Date: June 14, 2024

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: */s/ Luke Nikas*

Luke Nikas (admitted *pro hac vice*)
Alex Spiro (admitted *pro hac vice*)
Michael Nosanchuk (admitted *pro hac vice*)
51 Madison Avenue, 22nd Floor
New York, NY 10010
Tel: 212-849-7000
Fax: 212-849-7100
lukenikas@quinnemanuel.com
alexspiro@quinnemanuel.com
michaelnosanchuk@quinnemanuel.com

John F. Bash (admitted *pro hac vice*)
300 W. 6th St., Suite 2010
Austin, TX 78701
Tel: 713-221-7000
Fax: 737-667-6110

johnbash@quinnemanuel.com

Sara Clark (admitted *pro hac vice*)
700 Louisiana St., Ste. 3900
Houston, TX 77002
Tel: 713-221-7000
Fax: 737-667-6110
saraclark@quinnemanuel.com

LEBLANC LAW LLC

Heather M. LeBlanc
823 Gold Ave. SW
Albuquerque, NM 87102
Tel: 505-331-7222
heather@leblanclawnm.com

Counsel for Defendant Alec Baldwin

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2024, a true and correct copy of the foregoing filed through the New Mexico Odyssey File & Serve system, which caused all counsel of record to be served by electronic means.

/s/ Heather M. LeBlanc
Heather M. LeBlanc