

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
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KATHLEEN VIGIL CLERK OF THE COURT
Monica Chavez Crespín

STATE OF NEW MEXICO,
Plaintiff,

v.

No. D-101-CR-2024-00013

ALEXANDER RAE BALDWIN III,
Defendant.

**ORDER DENYING DEFENDANT
ALEC BALDWIN'S MOTION TO DISMISS THE INDICTMENT**

THIS MATTER came before the Court on Defendant Alec Baldwin's Motion to Dismiss the Indictment, filed March 14, 2024. Having reviewed the briefing, considered oral argument, and being otherwise fully advised, THE COURT FINDS, CONCLUDES, AND ORDERS:

PROCEDURAL SUMMARY

On March 14, 2024, Defendant Alexander Rae Baldwin III ("Defendant" or "Target") filed his Defendant Alec Baldwin's Motion to Dismiss the Indictment ("Motion to Dismiss" or "MTD"). Thereafter, on April 5, 2024, the State filed its State's Response to Defendant's Motion to Dismiss the Indictment ("Response"). In turn, on April 22, 2024, Defendant filed his Reply in Further Support of Defendant Alec Baldwin's Motion to Dismiss the Indictment ("Reply"). The parties engaged in additional briefing concerning a requested surreply by the State. However, the Court denied the State's request via the Court's April 30, 2024 Order Denying [State's] Expedited Motion for Leave of Court to File Supplemental Response.

On May 17, 2024, the Court entertained oral argument on Defendant's Motion to Dismiss. Special Prosecutor Ms. Kari Morrissey appeared and argued on behalf of the State. Defense Counsels Mr. Alex Spiro and Mr. Luke Nikas appeared and argued on behalf of Defendant.

Following argument, the Court reserved ruling on Defendant’s Motion to Dismiss. The Court now enters its ruling through the instant order.

FACTUAL BACKGROUND

Defendant’s Motion to Dismiss primarily concerns the State’s presentation of an investigation into then-Target Baldwin to a Santa Fe County Grand Jury on January 18, 2024 and January 19, 2024. In advance of this grand jury presentation, the State filed two motions: one motion concerned whether the State had to present Target-offered evidence to the grand jury; the second motion concerned whether the State had to provide Target-requested jury instructions to the grand jury.¹

As to the first topic, on November 15, 2023, the State filed a State’s Expedited Motion to Preclude Target’s Requested Testimony and Evidence Before the Grand Jury (the “November 15, 2023 Expedited Motion”). MTD Ex. 7.² In summary, the November 15, 2023 Expedited Motion concerned the State’s objections to then-Target’s proposed evidence alert letter provided to the prosecution pursuant to Rule 5-302.2(C) NMRA. *Id.* Ultimately, the Honorable T. Glenn Ellington, in his role as grand jury judge, instructed the State to alert the grand jury to nearly all of the evidence set forth in the Target’s evidence alert letter via Judge Ellington’s Order on State’s Expedited Motion to Preclude Target’s Requested Testimony and Evidence Before the Grand Jury, filed January 11, 2024 (the “January 11, 2024 Order on State’s Expedited Motion”). MTD Ex. 11. Albeit, Judge Ellington’s January 11, 2024 Order on State’s Expedited Motion struck portions of

¹ The parties engaged in additional pre-indictment motion practice. However, those motions are not directly relevant to this order.

² Pre-indictment filings originally appeared in sealed cause no. D-101-GJ-2023-00008. Thereafter, the Court released pre-indictment filings relating to Target Baldwin on March 19, 2024. *See* Correspondence to Clerk of Court, filed Mar. 19, 2024, in D-101-CR-2024-00013 (citing LR1-303(A) NMRA); LR1-303(A) NMRA (“Grand jury proceedings, including but not limited to subpoenas for witnesses, docket records, and returns of service, are confidential until an indictment is filed with the court . . .”).

the target's evidence alert letter as argumentative. *See* MTD Ex. 11, Jan. 11, 2024 Order on State's Expedited Mot., Ct.'s Ex. 1.

As to the second topic, on December 1, 2023, the State filed its State's Motion to Exclude Target's Requested Elements Instructions to the Grand Jury (the "December 1, 2023 Motion to Exclude"). MTD Ex. 8. In summary, the December 1, 2023 Motion to Exclude concerned the State's objections to jury instructions proposed by the then-Target for consideration by the grand jury. *Id.* Specifically, the following jury instructions were at issue: UJI 14-231 NMRA ("Involuntary Manslaughter; Essential Elements"); UJI 14-133 NMRA ("Negligence' and 'Recklessness'; Defined"); UJI 14-251 NMRA ("Homicide; 'Proximate Cause'; Defined"); and, UJI 14-252 NMRA ("Homicide; Negligence of Deceased or Third Person"). *Id.*

Thereafter, Judge Ellington entered a January 11, 2024 Order Granting In Part and Denying In Part State's Motion to Exclude Target's Requested Elements Instructions to the Grand Jury (the "January 11, 2024 Order on State's Motion to Exclude"). MTD Ex. 12. The January 11, 2024 Order on State's Motion to Exclude concluded that certain jury instructions proposed by the then-Target "materially differ[ed] from UJI 14-231 NMRA and UJI 14-133 NMRA." MTD Ex. 12, Jan. 11, 2024 Order on State's Mot. to Exclude ¶ 8 (citing *State v. Caldwell*, 2008-NMCA-049, ¶ 24, 143 N.M. 792). "Therefore, the Court grant[ed] the State's requested exclusion of the Target's proffered criminal negligence standard instructions." *Id.* In addition, Judge Ellington's order addressed the State's concession that the State would present UJI 14-251 NMRA to the grand jury, and "caution[ed] the State that it must provide UJI 14-252 NMRA if the evidence supports its provision to the grand jury." MTD Ex. 12, Jan. 11, 2024 Order on State's Mot. to Exclude ¶¶ 9-10. The January 11, 2024 Order on State's Motion to Exclude did not address other substantive instructions for provision to the grand jury.

On January 18, 2024 and January 19, 2024, the State presented an investigation concerning then-Target Baldwin to a Santa Fe County Grand Jury. *See generally* MTD Exs. 19, 20. The State called the following witnesses to give testimony during the grand jury presentation: Corporal Alexandra Hancock, Marissa Poppell, Michael Haag, Bryan Carpenter, Ross Addiego, Lane Luper, and Connor Rice. *Id.* In addition, at the beginning of its presentation, the State read the then-Target’s evidence alert letter verbatim to the grand jury. *See* MTD Ex. 19, Tr. 7:21-15:3.

After the grand jury considered witness testimony, the State provided the grand jury with instructions based upon the following uniform jury instructions or applicable statute (and modified to reflect the probable cause standard assessed by grand juries): (a) UJI 14-231 NMRA (“Involuntary Manslaughter; Essential Elements”); (b) UJI 14-231 NMRA (“Involuntary Manslaughter; Essential Elements”);³ (c) NMSA 1978, Section 30-1-12(B) (1963) (defining “deadly weapon”); (d) UJI 14-133 NMRA (“‘Negligence’ and ‘Recklessness’; Defined”); (e) UJI 14-251 NMRA (“Homicide; ‘Proximate Cause’; Defined”); (f) UJI 14-252 NMRA (“Homicide; Negligence of Deceased or Third Person”); (g) UJI 14-141 NMRA (“General Criminal Intent”); and, (h) UJI 14-8006 NMRA (“Grand Jury Proceedings; Definition of Probable Cause”). MTD Ex. 20, Tr. 95:21-100:1.

Following the State’s presentation and instructions, on January 19, 2024, the Grand Jury returned a Grand Jury Indictment against Defendant charging: Count 1: Involuntary Manslaughter (Negligent Use of a Firearm); and, Alternative Count 1: Involuntary Manslaughter (Without Due Caution or Circumspection). Through the instant Motion to Dismiss, Defendant now challenges the grand jury proceedings.

³ The State provided this instruction twice, reflecting alternative counts of the indictment.

ANALYSIS AND RULING

Defendant's Motion to Dismiss makes six primary arguments in support of the requested relief of dismissal. First, Defendant argues that the State exhibited bad faith in seeking the indictment against Defendant Baldwin. MTD 36-39. Second, Defendant asserts that the State "withheld exculpatory and favorable evidence" from the grand jury. *Id.* at 40-44. Third, Defendant contends that the State provided an inaccurate jury instruction to the grand jury. *Id.* at 45-47. Fourth, Defendant asserts that the State failed to advise the grand jury of its authority to order the presentation of evidence and witnesses beyond those offered by the State. *Id.* at 47-49. Fifth, Defendant argues that the State failed to follow the instructions of the grand jury judge. Reply 5-9. Last, Defendant contends that the State's Response constitutes a waiver of many arguments and objections raised in Defendant's Motion to Dismiss. *Id.* at 2-4. The Court addresses these arguments below.

A. Summary of Law on Challenges to Grand Jury Indictments.

"Challenges arising from grand jury proceedings ordinarily fall into two categories: (1) challenges to the quality or sufficiency of the evidence before the grand jury and (2) structural challenges involving the manner in which the grand jury process has been conducted." *Herrera v. Sanchez*, 2014-NMSC-018, ¶ 12, 328 P.3d 1176.

With respect to challenges to the sufficiency of evidence before the grand jury, NMSA 1978, Section 31-6-11(A) (2003) provides, "[t]he sufficiency of the evidence upon which an indictment is returned shall not be subject to review absent a showing of bad faith on the part of the prosecuting attorney assisting the grand jury."

With respect to structural challenges, "[i]f the prosecutor does not strictly adhere to the grand jury statutes and procedural rules designed to protect the target's rights and ensure the

fundamental fairness of the proceeding, the structural integrity of the grand jury process is compromised, along with the grand jury's determination of probable cause.” *Herrera*, 2014-NMSC-018, ¶ 15 (citing *Baird v. State*, 1977-NMSC-067, ¶ 6, 90 N.M. 667). Further, “[i]f the target of a grand jury investigation establishes, pretrial, that the grand jury proceedings were conducted in violation of these structural protections, the target is entitled to dismissal of the indictment and is not required to demonstrate prejudice.” *Id.* ¶ 17.

Appellate courts have found structural protection violations in the following instances. First, in *Herrera v. Sanchez*, the New Mexico Supreme Court found structural protection violations when the prosecutor unlawfully prohibited a target from providing testimony in response to a grand juror's question, and when the grand jury received inadequate instructions on the law. *Herrera*, 2014-NMSC-018, ¶¶ 23-26, 30-31; *cf. State v. Deignan*, 2016-NMCA-065, ¶ 11, 377 P.3d 471 (“[W]e understand *Herrera* to require an assessment of the prosecutor's actions, viewed under the totality of the circumstances, in order to determine whether they prevented the jury from ‘mak[ing] an independent inquiry into the evidence supporting a determination of probable cause.’” (quoting *Herrera*, 2014-NMSC-018, ¶ 24)).

Second, in *DeLeon v. Hartley*, the New Mexico Supreme Court concluded that a structural protection violation occurred when the prosecutor excused grand jurors without involvement by the district court. *DeLeon v. Hartley*, 2014-NMSC-005, ¶ 11, 316 P.3d 896. Third, in *State v. Ulibarri*, the New Mexico Supreme Court determined that a prosecutor's failure to “instruct the grand jury, on the record, of the essential elements of offenses” constituted structural error. *State v. Ulibarri*, 2000-NMSC-007, ¶ 1, 128 N.M. 686. Fourth, in *Baird v. State*, the New Mexico Supreme Court found a structural protection violation when the prosecutor was amongst the grand jury during its secret deliberations. *Baird v. State*, 1977-NMSC-067, ¶ 6, 90 N.M. 667. Fifth, in

Davis v. Traub, the New Mexico Supreme Court concluded a structural error occurred when an unauthorized individual was present during the course of a grand jury presentation. *Davis v. Traub*, 1977-NMSC-049, ¶ 4, 90 N.M. 498. Last, in *State v. Pareo*, the New Mexico Court of Appeals found a structural protection violation when the prosecution did not afford the defendants their right to testify to the grand jury, and inadequately instructed the grand jury regarding such right. *State v. Pareo*, 2018-NMCA-040, ¶ 8, 420 P.3d 605.

Other than the two categories of challenges identified above, New Mexico appellate courts have limited other substantive reviews of proceedings before a grand jury. For instance, in *State v. Martinez*, the New Mexico Supreme Court acknowledged that neither “the legislative [nor] judicial branches [] permit judicial review of the quality or quantity of evidence considered by the grand jury.” *State v. Martinez*, 2018-NMSC-031, ¶ 27, 420 P.3d 568; *see also State v. Romero*, 2006-NMCA-105, ¶ 5, 140 N.M. 281 (“[W]e conclude that (1) the 2003 version of Section 31-6-11(A) is directory and for the guidance of the grand jury, and (2) the Legislature has not authorized judicial review of the evidence presented to a grand jury except for its sufficiency and then only upon a showing of prosecutorial bad faith.”).

Similarly, in *State v. Yaw*, the New Mexico Court of Appeals held that post-indictment challenges, implicating Section 31-6-11(B), to a prosecutor’s decision to present evidence to, or exclude evidence from, the grand jury are also not reviewable by the district court absent a showing of bad faith. *State v. Yaw*, 2011-NMCA-023, ¶ 11, 150 N.M. 278, *cert. denied*, 2011-NMCERT-001, 150 N.M. 558 (S-1-SC-32645); *see generally* NMSA 1978, § 31-6-11(B) (2003) (“It is the duty of the grand jury to weigh all the evidence submitted to it, and when it has reason to believe that other lawful, competent and relevant evidence is available that would disprove or reduce a charge or accusation or that would make an indictment unjustified, then it shall order the evidence

produced.”). Specifically, the Court of Appeals held, “[w]e treat disputes over evidence before the grand jury quite differently. When there is such a dispute, the prosecutor has broad discretion as to what evidence to present to, or exclude from, the grand jury, and courts will not review any good-faith decisions the prosecutor makes in that regard once an indictment is returned. There is no post-indictment relief for a defendant once the grand jury returns an indictment absent a showing of prosecutorial bad faith.” *Id.* ¶ 11 (citations omitted).

B. The Court Does Not Find Prosecutorial Bad Faith.

In *State v. Deignan*, the New Mexico Court of Appeals explained the meaning of bad faith in the context of challenges to a grand jury indictment. *Deignan*, 2016-NMCA-065, ¶ 6. Therein, the Court of Appeals held that bad faith meant “[d]ishonesty of belief, purpose, or motive[.]” *Id.* (quoting Black’s Law Dictionary 166 (10th ed. 2014)). The Court of Appeals added that, for bad faith to exist, the prosecutor must have engaged in “intentional misconduct . . . , not simply negligence or even recklessness.” *Id.* Further, in *State v. Martinez*, the New Mexico Supreme Court explained, “we note that [Section 31-6-11(A)] appears to address bad faith in presentation of evidence to the grand jury, such as deceiving the grand jury as to the probative value of the evidence, but not bad faith in the initial acquisition of probative evidence that may be subject to suppression at trial.” *Martinez*, 2018-NMSC-031, ¶ 30.

Other than the guidance provided by *Deignan* and *Martinez*, the Court could not find, and the parties do not offer, additional authority defining prosecutorial bad faith in the context of a grand jury presentation. *See* MTD 36. Nonetheless, while the Court recognizes that Defendant cites numerous instances of alleged prosecutorial “misconduct leading up to the grand jury proceeding,” MTD 36-39, and instances of the prosecution purportedly presenting “false” testimony to the grand jury, MTD 20-27, the Court does not find that Defendant has established

prosecutorial bad faith. In other words, after review of transcripts from the January 18, 2024 and January 19, 2024 grand jury presentations, the Court does not find that the “prosecuting attorney assisting the grand jury” engaged in “intentional misconduct” reflecting “dishonesty of belief, purpose, or motive” in the course of the attorney’s “presentation of evidence to the grand jury.” § 31-6-11(A); *Deignan*, 2016-NMCA-065, ¶ 6; *Martinez*, 2018-NMSC-031, ¶ 30.

C. The Court Does Not Review the State’s Decisions Regarding Evidence Presented To, or Excluded From, the Grand Jury.

Defendant argues, “[t]he indictment must be dismissed because the State withheld exculpatory and favorable evidence” from the grand jury. MTD 40. In support, Defendant *inter alia* claims the State “was required to elicit [] exculpatory testimony from Halls and Souza; she was also required to provide the grand jury with specific documents, identified in Baldwin’s alert letter, that reflect these and similar exculpatory statements from both witnesses.” *Id.* at 41. The Court disagrees with Defendant for three reasons.

First, Defendant conflates a prosecutor’s duty to alert the grand jury to target-offered evidence with a prosecutor’s discretion to present exculpatory evidence. The New Mexico Supreme Court’s holding in *Jones v. Murdoch* unravels these concepts:

The heart of this case involves the statutorily-created right of the target to alert the grand jury to exculpatory evidence. The provision at issue does not purport to command the grand jury to accept the target’s evidence. Instead, the provision simply identifies the prosecutor as the conduit by which a target may alert the grand jury to pertinent evidence. As such, the provision at issue in this case does not diminish the grand jury’s prerogative to weigh the evidence before it as it sees fit in making an independent decision whether to indict. Indeed, the grand jury is not even required to hear the evidence once it is made aware of its existence. But the grand jury cannot choose to ignore what it does not know.

[T]he 2003 amendments to Section 31-6-11(B) also eliminated the prosecutor’s duty to present evidence that directly negates guilt.

Jones, 2009-NMSC-002, ¶¶ 24, 28. Therefore, the Court concludes that the prosecution was not required to present, and the grand jury was not required to order, target-offered exculpatory evidence.

Second, as decided in *State v. Yaw*, “the prosecutor has broad discretion as to what evidence to present to, or exclude from, the grand jury, and courts will not review any good-faith decisions the prosecutor makes in that regard once an indictment is returned.” *Yaw*, 2011-NMCA-023, ¶ 11. Therefore, in the instant case, because the Court has not found prosecutorial bad faith, the Court will not engage in a post-indictment review of the evidence submitted to the grand jury. *See id.* (“As a result of this distinction between the process of, and the evidence to be submitted to, the grand jury, Defendants were required to show prosecutorial bad faith before the district court could inquire into their claims. Because Defendants have made no such showing, they are not entitled to the relief they seek.”).

Third, while the Court acknowledges Defendant’s argument that “Morrisey diverted the grand jury from hearing exculpatory evidence” by “re-direct[ing] [grand juror] inquiries to her own witnesses,” MTD 29-30, the Court does not find that this conduct amounted to structural error akin to that found in *Herrera v. Sanchez*. Critically, in *Herrera*, the prosecutor prohibited the target, who has a statutory right to testify, from answering a direct question from a grand juror. *Herrera*, 2014-NMSC-018, ¶ 26 (“We hold that the prosecuting attorney lacked authority to preclude Petitioner from answering direct questions from the grand jury and erred by interfering with the grand jury’s inquiry into the evidence without first seeking guidance from the presiding grand jury judge.”). In addition, the prosecutor’s action in *Herrera* had the effect of chilling additional questioning by the grand jury of that target. *Id.* ¶ 8.

Regarding the instant case, in at least five separate instances, a grand juror posed a question to a witness, who the prosecutor considered “not qualified to answer,” Response 28, and resultantly deferred the grand jurors’ questions to other witnesses. *See, e.g.*, MTD Ex. 19, Tr. 66-67 (“[Prosecutor:] We have an expert who works on movie sets, and he’s going to answer those questions for you if that’s okay.”); MTD Ex. 19, Tr. 73 (“[Prosecutor:] Is it okay with you if we addressed that question to a different witness?”); MTD Ex. 19, Tr. 74-75 (“[Prosecutor:] You’re going to get more testimony on this . . . and photographs that I think is going to help.”); MTD Ex. 19, Tr. 147-48 (“[Prosecutor:] We’ve got other witnesses that - - that I think are going to be able to address that better. I don’t think Mr. Haag can address that, but it’s coming.”); MTD Ex. 20, Tr. 86 (“[Prosecutor:] I don’t know if he’s familiar enough with that - - with the relationship between the prop master and the armorer to answer that question. But we have a witness sitting out there who may be able to answer it.”). However, because these questions were not posed directly to the then-Target, who has a statutory right to testify before the grand jury, the Court concludes that *Herrera* is not directly applicable to the instant case. Further, the deferral of questions did not have a chilling effect, whereby the grand jury thereafter refrained from posing additional, subsequent questions; thus, in this respect, the instant matter is also distinguishable from the factual scenario analyzed in *Herrera*.

In addition, in *State v. Deignan*, the New Mexico Court of Appeals explained, “we understand *Herrera* to require an assessment of the prosecutor’s actions, viewed under the totality of the circumstances, in order to determine whether they prevented the jury from ‘mak[ing] an independent inquiry into the evidence supporting a determination of probable cause.’” *Deignan*, 2016-NMCA-065, ¶ 11 (quoting *Herrera*, 2014-NMSC-018, ¶ 24). Viewed under the totality of the circumstances, the Court does not find that the prosecutor’s deferral of questions “prevented

the jury from ‘mak[ing] an independent inquiry into the evidence supporting a determination of probable cause.’” *Id.* Although the State deferred certain questions, in many other instances, the grand jurors asked probative questions, and received complete answers from witnesses, without State interference. *See, e.g.*, MTD Ex. 19, Tr. 61-74; MTD Ex. 19, Tr. 94-97; MTD Ex. 19, Tr. 148-152. Therefore, the Court concludes that the prosecution’s deferral of the grand jurors’ questions does not constitute structural error under either *Herrera* or other New Mexico appellate authority.

Rather, the Court views the Defendant’s arguments on the deferral of jurors’ questions as implicating a review of the competency, quality, or sufficiency of the evidence presented to the grand jury. To undertake such a review, the Court would necessarily have to evaluate the quality or competency of the evidence presented, speculate as to how a witness may have answered a deferred question, and assess whether the witness’s testimony in response to the question may have been exculpatory. However, in the absence of prosecutorial bad faith, the Court may not engage in this type of review. *Herrera*, 2014-NMSC-018, ¶ 13 (“In accordance with this statute, our courts will not entertain a target’s challenge to the quality or sufficiency of the evidence presented to the grand jury unless the target demonstrates prosecutorial bad faith.”); *Martinez*, 2018-NMSC-031, ¶¶ 26-27 (authorizing only review of sufficiency of the evidence presented to the grand jury with showing of bad faith); *see also Jones*, 2009-NMSC-002, ¶ 38 (suggesting in *dicta* requirement of prosecutorial bad faith for district court to review whether prosecutor fairly questioned target-alerted witnesses).

D. The Court Does Not Find Error With Respect to the Contested Jury Instruction.

Defendant argues that the “State provided an inaccurate jury instruction regarding a critical element of the charged offense.” MTD 45. Specifically, Defendant takes issue with the

prosecution’s version of element one of UJI 14-231 NMRA (“Involuntary Manslaughter; Essential Elements”), which read, “[t]he target discharged a firearm during the production of a movie without first verifying the firearm contained no live ammunition and while the firearm was pointed in the direction of another.” Ex. 20, Tr. 97:7-10.

“When a uniform jury instruction exists, that instruction must be used without substantive modification.” *State v. Caldwell*, 2008-NMCA-049, ¶ 24, 143 N.M. 792. “For fundamental error to exist, the instruction given must differ materially from the uniform jury instruction, . . . omit essential elements, . . . or be ‘so confusing and incomprehensible that a court cannot be certain that the jury found the essential elements under the facts of the case.’” *Id.* (citations omitted); *see also* MTD Ex. 12, Jan. 11, 2024 Order on State’s Mot. to Exclude ¶ 8 (citing *Caldwell*, 2008-NMCA-049, ¶ 24).

In pertinent part, and modified for furnishing to a grand jury, UJI 14-231 NMRA reads: “For you to [return an indictment against the accused for the crime of involuntary manslaughter], [you must find that there is probable cause to believe] each of the following elements of the crime: 1. _____ (name of [target]) _____ (describe [target’s act]).” *See also* UJI 14-8005 NMRA (setting forth example language to construct an essential elements instruction for a grand jury).

Here, the Court does not find error in the State’s construction of element one of the involuntary manslaughter instruction. The language of the jury instruction merely describes the alleged act, and attendant factual circumstances, on which the prosecution sought a finding of probable cause. In other words, in accordance with the statutory charge of involuntary manslaughter, the instruction alleges the “commission of a lawful act which might produce death . . . without due caution and circumspection.” NMSA 1978, § 30-2-3(B) (1994); *see also State v.*

Laney, 2003-NMCA-144, ¶ 38, 134 N.M. 648 (“A jury instruction is proper, and nothing more is required, if it fairly and accurately presents the law.”). The given jury instruction does not materially differ from the uniform jury instruction, omit essential elements, or constitute a confusing or incomprehensible charge. *See Caldwell*, 2008-NMCA-049, ¶ 24.

E. The Court Concludes that the Prosecution Adequately Advised the Grand Jury Vis-à-Vis the Then-Target’s Evidence Alert Letter.

Defendant contends that the prosecutor erred by not explaining the significance of the then-Target’s evidence alert letter when read by the prosecutor to the grand jury. Specifically, Defendant states, “Morrisey never explained the meaning or practical significance of Baldwin’s alert letter, why it was being read into the record, or what the grand jurors were supposed to do with it. . . . Nor did she explain that the witnesses identified in the alert letter were *available* to testify.” MTD 47-48 (citing MTD Ex. 19, Tr. 7:7-17:12). The Court finds no error.

Pursuant to NMSA 1978, Section 31-6-11(B) (2003), “the target or his counsel may alert the grand jury to the existence of evidence that would disprove or reduce an accusation or that would make an indictment unjustified, by notifying the prosecuting attorney who is assisting the grand jury in writing regarding the existence of that evidence.” Further, Rule 5-302.2(C)(3) NMRA sets forth the procedure for a target to alert the grand jury to the existence of exculpatory evidence, with the prosecutor acting as the conduit for this information. *See also Jones*, 2009-NMSC-002, ¶ 24 (“Instead, the provision simply identifies the prosecutor as the conduit by which a target may alert the grand jury to pertinent evidence.”). Notably, Form 9-219 NMRA also sets forth a form grand jury evidence alert letter for use by a target. Form 9-219 includes preamble language generally advising, “[i]n accordance with the rights and obligations of the grand jury under New Mexico law, the above-noted target of the grand jury proceeding in this case requests the grand jury consider the following evidence: . . .”

Here, the State read the then-Target's evidence alert letter verbatim to the grand jury. MTD Ex. 19, Tr. 7:7-17:12. After receiving this letter, the grand jury opted not to consider additional evidence offered by the then-Target. *See Jones*, 2009-NMSC-002, ¶ 24 ("Indeed, the grand jury is not even required to hear the evidence once it is made aware of its existence."). Other than alerting the grand jury to the evidence, neither Section 31-6-11(B), nor Rule 5-302.2, nor Form 9-219 expressly require the prosecutor to provide additional instruction to the grand jury. *See Jones*, 2009-NMSC-002, ¶ 11 ("Assuming that the target's offer of evidence meets the evidentiary standards set forth by statute, Section 31-6-11(B) only requires that the grand jury be alerted to its existence. We contemplate requiring nothing more.").

In addition, every grand jury impaneled for a term of service at the First Judicial District Court receives instructions by the grand jury judge substantially similar to UJI 14-8001 NMRA. *See id.* ("Grand Jury Proceedings; Explanation of Proceedings"). The grand jury docket reflects that a similar instruction was given to the grand jury impaneled to consider the grand jury presentation at issue herein. *See Ct.'s Ex. 1, Instructions to the Grand Jury, In the Matter of the Santa Fe Grand Jury*, filed November 2, 2023, in D-101-GJ-2023-00007 and D-101-GJ-2023-00008; *see also* Rule 11-201 NMRA (authorizing court to take judicial notice of adjudicative facts); *State v. Turner*, 1970-NMCA-054, ¶ 25, 81 N.M. 571 ("We take judicial notice of the records on file in this court.").

The Instructions to the Grand Jury provide, in relevant part:

The grand jury has the power to order the attendance of witnesses and to cause the production of public and private records or other evidence relative and relevant to its investigations. It has the authority of this court to subpoena witnesses . . . If you have reason to believe that evidence not presented to you is available that may excuse or disprove a charge or accusation or that would make an indictment unjustified, then you may order that evidence be produced.

Ct.'s Ex. 1 at p. 2.

Evidently, after the State read the Target's evidence alert letter, the grand jury decided not to order production and presentation of the Target's evidence. The Court is not in a position to second-guess the grand jury's decision in this regard, and will not disparage the grand jury by doubting its ability to remember the grand jury judge's UJI 14-8001 instruction. The Court finds no error in the actions taken by the prosecutor vis-à-vis the reading of the evidence alert letter to the grand jury.

F. The Court Does Not Find That the Prosecution Violated the Instructions of the Grand Jury Judge.

Defendant's Reply expounds upon Defendant's arguments concerning the State's compliance with Judge Ellington's January 11, 2024 Order on State's Expedited Motion. Defendant explains, "the State violated the Court's order. The State did not make the witnesses readily available. The State also violated New Mexico law, because it failed to present any of the exculpatory evidence from those witnesses or the documents Baldwin identified." Reply 5. Defendant's arguments are not well taken.

First, as to whether the witnesses were made "readily available" by the prosecutor, Judge Ellington's January 11, 2024 Order on State's Expedited Motion reads, in material part, "[Header:] The Court Declines to Instruct the State on the Logistics of Securing the Availability of the Target's Alerted Witnesses and Tangible Evidence. [¶ 16] . . . [T]he Court instructs the State to make readily available the proposed tangible evidence and potential witnesses to avoid scheduling disruptions if the grand jury wishes to hear the evidence once alerted. However, the Court declines to provide additional instruction to the State on securing witness availability." MTD Ex. 11, Jan. 11, 2024 Order on State's Expedited Mot. 7-8.

Given the language of the order, the Court concludes that the prosecutor did not violate Judge Ellington's instruction. Judge Ellington clearly declined to "instruct the State on the

logistics of securing the availability of the Target’s alerted witnesses and tangible evidence.” *Id.* at 8 (header text converted to uncapitalized text); *cf. Jones*, 2009-NMSC-002, ¶ 37 (finding it imprudent to require the grand jury judge to craft a script for witnesses who may never be called).

Further, Defendant takes the order’s reference to “make readily available” out of context. In material part, the order reads, “[t]he Court instructs the State to make readily available . . . potential witnesses to avoid scheduling disruptions *if* the grand jury wishes to hear the evidence once alerted.” *Id.* (emphasis added). Thus, Judge Ellington’s instruction is ambiguous, in that the instruction could be interpreted to mean that the State was to make witnesses: (a) readily available; or (b), readily available *if* the grand jury sought their testimony. Therefore, given Judge Ellington’s declination to provide logistical guidance to the State, and the ambiguity of the instruction, this Court does not find that the State violated Judge Ellington’s January 11, 2024 Order on State’s Expedited Motion.

Second, the Court rejects Defendant’s argument that the State violated “the Court’s orders [and] New Mexico law requiring that the exculpatory evidence be presented.” Reply 8. Nowhere in the January 11, 2024 Order on State’s Expedited Motion does Judge Ellington order the State to present exculpatory evidence to the grand jury. *See* MTD Ex. 11, Jan. 11, 2024 Order on State’s Expedited Mot. 2-6 (ordering, repeatedly, that the prosecution “*alert*” the grand jury to target-offered evidence). Further, as developed in greater detail above, New Mexico law does not require a prosecutor to present exculpatory evidence to a grand jury, or require a grand jury to even consider exculpatory evidence after alerted to its existence. *See, e.g., Jones*, 2009-NMSC-002, ¶ 12 (“Even if the grand jury judge determines that the grand jury should be alerted to the existence of the evidence, the grand jury remains free to decide not to hear the evidence offered by the target or to hear the evidence and weigh it as it sees fit.”); *id.* ¶ 28 (acknowledging elimination of “the

prosecutor's duty to present evidence that directly negates guilt" due to amendment of Section 31-6-11(B)).

Therefore, the Court concludes that the State did not violate Judge Ellington's January 11, 2024 Order on State's Expedited Motion.

G. The Court Rules on the Merits of the Defendant's Motion to Dismiss.

Defendant asserts: "the State responded with a 32-page jeremiad against Baldwin and his lawyers that does not cite a *single* legal decision, does not distinguish Baldwin's authorities, and spends no more than five pages addressing the core legal issues raised in Baldwin's motion." Reply 1. Further, Defendant concludes that the "State's failure to distinguish Baldwin's authorities or offer legal authority of its own constitutes a waiver." Reply 4.

The Court declines to grant Defendant's Motion to Dismiss on grounds of waiver. New Mexico case law recognizes a "strong bent in favor of deciding matters on their merits." *Atherton v. Gopin*, 2015-NMCA-003, ¶ 27, 340 P.3d 630. Accordingly, the Court addresses Defendant's Motion to Dismiss on its merits.

CONCLUSION

IT IS THEREFORE ORDERED that Defendant Alec Baldwin's Motion to Dismiss the Indictment is hereby DENIED.

IT IS HEREBY ORDERED.



MARY MARLOWE SOMMER
DISTRICT COURT JUDGE
DIVISION VIII

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date of acceptance for e-filing a true and correct copy of the foregoing was e-served on counsel registered for e-service in this matter as listed below.

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FILED
FIRST JUDICIAL
DISTRICT COURT

2023 NOV -2 PM 12:41

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

IN THE MATTER OF THE
SANTA FE GRAND JURY
Public

D-0101-GJ-2023-00007
D-0101-GJ-2023-00008 Nem

INSTRUCTIONS TO THE GRAND JURY

LADIES AND GENTLEMEN OF THE GRAND JURY

FUNCTION OF THE GRAND JURY

The court, being advised in the premises and deeming it necessary finds that a grand jury should be convened for the purpose of considering criminal cases which may be presented to it, offenses presented for consideration and indictment, special inquiry or investigation of a public officer regarding removal on grounds specified in 10-4-2 NMSA 1978.

IT IS THEREFORE ORDERED that a grand jury for SANTA FE County, New Mexico, be convened to meet at on Thursdays, to consider any matters brought before the grand jury. You have been summoned to serve as members of the grand jury for Santa Fe County to investigate offenses presented for consideration and indictment, special inquiry or investigation of a public officer regarding removal on grounds specified in 10-4-2 NMSA 1978. These instructions to the grand jury filed on Thursday, November 2, 2023, convened this grand jury. You have qualified as members of such grand jury and it is my duty as District Judge to instruct you as to your duties, authority and the special responsibilities you now have as members of the grand jury.

The Presiding Judge of the Grand Jury will guide you to assure that your actions are within the authority conferred upon you by law. Any grand juror may at any time, with propriety, seek advice and guidance from him/her as to the scope and propriety of the grand jury's acts and investigations. The grand jury, however, is subject to no other supervision or control from any person, office or body.

Your purpose as grand jurors is to investigate the matter for which this grand jury was called and to determine from the evidence if there is probable cause to believe an offense has been committed.

EVIDENCE

The grand jury has the power to order the attendance of witnesses and to cause the production of public and private records or other evidence relative and relevant to its investigations. It has the authority of this court to subpoena witnesses and to obtain execution of subpoenas by any public officers charged with such duties. If you have reason to believe that evidence not presented to you is available that may excuse or disprove a charge or accusation or that would make an indictment unjustified, then you may order that evidence be produced.

In the course of your investigation and the presentation of charges by the prosecutor, you shall consider the oral testimony of witnesses under oath and any documentary or other physical evidence exhibited to the grand jury.

It is for you to decide whether the witnesses know what they are talking about and whether they are being truthful. You may give the testimony of any witness whatever weight you believe it merits.

You must decide the case solely upon the evidence received during these proceedings. It is for you to decide whether the evidence presented is true or false. You may give the evidence whatever weight you believe it merits. You must not consider anything you may have read or heard about the case except as a part of your inquiry as members of the grand jury.

In the course of your investigation, it is your duty to protect citizens against unfounded accusations whether they come from the government or others, and to prevent anyone from being indicted through malice, hatred or ill will.

PROBABLE CAUSE

For you to return an indictment you must find probable cause. "Probable cause" means the evidence presented would cause a reasonable person to believe that an offense has been committed and that the accused committed the offense. Probable cause does not require proof beyond a reasonable doubt.

LIMITS OF INVESTIGATION

The indiscriminate summoning of witnesses, on the mere chance that some crime may be discovered, is forbidden.

The grand jury has no right to conduct an investigation into the personal affairs of citizens. It may not investigate the function, operation and housekeeping of any branch of government, except the jails or prisons within the county. It is not a function of the grand jury to criticize or regulate agencies of government or private persons or institutions except jails or prisons.

Witnesses brought before the grand jury shall not be harassed nor subjected to unreasonable repeated appearance before the grand jury or the prosecuting attorney. This does not mean, however, that witnesses may not be brought before you on more than one occasion if either you or the prosecuting attorney shall so require.

ASSISTANCE FOR GRAND JURY

The court shall assign a clerk to you, as all testimony presented must be recorded. The court may also assign to you a bailiff, interpreter or others necessary individuals to carry out your duties, but no one except members of the grand jury may be present during your deliberations or upon your taking of a vote.

The District Attorney, the Attorney General, or their assistants shall assist you, examine witnesses, prepare indictments and reports at your request, and provide your foreperson with a form of oath to be administered by the foreperson to the witnesses who appear before you. The Prosecuting Attorney will advise you of the essential elements of any offense which is to be considered. You must carefully consider these elements prior to returning an indictment. The Prosecuting Attorney will answer, on the record, any questions you may have. The statutes of New Mexico will be available to you and the Prosecuting Attorney can explain at your request our criminal laws to you. A copy of this and other instructions will be placed in your hands for further guidance and information.

You may call upon this court for assistance and advice and you may request this court to call upon the attorney general of the state to aid you. If necessary, you may request this court for legal or other assistance in your inquiry.

SECRECY OF GRAND JURY PROCEEDINGS

If any person attempts to contact you with respect to any of your duties as a grand juror, advise such person that you cannot discuss with him any matter pertaining to your duties as a grand juror, obtain his name and address, if possible, and report the matter to the court without delay.

The law requires that all that you hear, see, say or vote upon shall be kept secret and shall not be revealed to anyone outside of the grand jury room except in your official reports, indictments and no-bills.

No grand juror shall, except in the performance of his official duty, disclose the fact that an indictment has been found against any person for any offense. You will allow no one in the grand jury room during your deliberations nor will you consult with anyone other than members of the grand jury as to how you should vote on any matter.

No one should have any advance information as to the activities of the grand jury or as to any activities which are planned by the grand jury.

A grand juror may not be questioned for anything he may say or any vote he may give relative to a matter legally pending before the grand jury except in the trial or prosecution of a witness for perjury before the grand jury.

The institution of the grand jury and its requirements in the due administration of the criminal law require that grand jurors observe and obey strictly this requirement as to the secrecy of all matters transacted before them. Any person found to have violated his oath as a grand juror is guilty of a misdemeanor.

Although all proceedings in the grand jury room will be reported verbatim, your deliberations will not be reported.

Any violations of the orders of the court by any person or persons committed in the presence of the grand jury should be reported to the court at once by any grand juror with knowledge thereof, and any public activity which violated the rule will be dealt with by the court in an appropriate manner.

FOREPERSON OF THE GRAND JURY

The foreperson of the grand jury shall convene the grand jury during the regular hours of this court. The foreperson may appoint a clerk from among you to aid in keeping your records of votes during secret sessions when other persons are not able to be present, and the foreperson shall sign all indictments and reports and shall swear in all witnesses before you. The clerk must preserve the minutes of your deliberations but no records shall be kept of the votes of the individual members of the grand jury on an indictment or on any other matter voted upon by the grand jury. You will be guided by the orders of your foreperson who shall preside over the sessions of the grand jury. The foreperson may recess the sessions of the grand jury and reconvene them. The foreperson, for good cause, may request the court to excuse or discharge individual grand jurors and to replace them with alternate grand jurors as necessary to continue the work of the grand jury.

INSTRUCTIONS BY THE COURT

The law governing these proceedings is contained in instructions given to you by the court, and it is your duty to follow that law. You must consider these instructions as a whole. You must not pick out one instruction or parts of an instruction and disregard others.

I will now administer the oath to you and give you a copy of these opening instructions.



T. Glenn Ellington
DISTRICT COURT JUDGE