

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

STATE OF NEW MEXICO,

Plaintiff,

v.

D-101-CR-2023-00040

HANNAH GUTIERREZ-REED,

Defendant.

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**REPLY TO RESPONSE TO MOTION TO DISMISS FIRST AMENDED  
INFORMATION**

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Defendant Hannah Gutierrez-Reed, by and through her counsel of record, Jason Bowles of Bowles Law Firm, and Todd J. Bullion of Bullion Law Office, respectfully replies to her Motion to Dismiss the First Amended Information, based on lack of prosecutorial authority, and violations of Reed's due process rights, in violation of the Fourteenth Amendment to the U.S. Constitution and Article II, Section 14 of the New Mexico Constitution. In the alternative, Reed asks the Court to consider lesser sanctions, including suppression of certain evidence, and replies as follows:

**I. IMPROPER AND SEVERELY PREJUDICIAL PROSECUTORIAL  
STATEMENTS MADE THROUGHOUT THE CASE**

In response to a motion concerning prejudicial pretrial publicity the new special prosecutors have "doubled down" and intentionally raised irrelevant inflammatory arguments in a further attempt to have the public unfairly prejudge this case against Hannah.

The State recklessly, falsely, and without factual foundation states:

Moreover, Defendant Gutierrez has previously been sued civilly for providing the keys to her motorcycle to an intoxicated person who was predictably involved in a motor

vehicle accident that resulted in someone's death. Witnesses in the current case will testify that Defendant Gutierrez was drinking heavily and smoking marijuana in the evenings during the shooting of Rust. It is likely that Defendant Gutierrez was hung over when she inserted a live bullet into a gun that she knew was going to be used at some point by an actor while filming a shooting scene with other actors and crew members. The crime of involuntary manslaughter was designed specifically for this type of circumstance. Defendant Gutierrez has a history of reckless conduct that has resulted in loss of human life and it is in the public interest that she finally be held accountable.

By so doing, the State has recklessly included allegations in its response that it knows would not be admissible in this criminal case. No permitted exception under Rule 11-404(b) would allow these unsupported allegations and they are purely prohibited "propensity" allegations. That rule states in pertinent part:

(1) Prohibited uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted uses; notice in a criminal case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. In a criminal case, the prosecution must

(a) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial, and

(b) do so before trial - or during trial if the court, for good cause, excuses lack of pretrial notice.

N.M. R. Evid. 11-404.

Second, the State did not remotely get the facts right. The person who died in a motorcycle accident was Hannah's boyfriend. He drove his own motorcycle away from Hannah's house, and

she did not provide him with the keys. In fact, Hannah's boyfriend's motorbike was a "kick start" that did not require keys. Hannah was inside a house at the time and ran outside when she heard her boyfriend drive off, wanting to stop him. The inclusion of this in the response is beyond the pale and outrageous.

Next, the State without identifying any "witnesses" baldly alleges that Ms. Gutierrez Reed was drinking heavily on nights during the Rust set and was "likely" hung over on the day of the shooting. It is very interesting that these allegations now belatedly surface after a full eighteen (18) month prior investigation, in which they were never made. In fact, witnesses to date have all said Hannah was reliable, competent and not hung over on the job. This includes the pretrial interview of props assistant, Nicole Montoya. The special prosecutor sat through this interview and heard Ms. Montoya say that Ms. Gutierrez-Reed was not hung over on the day of the tragic shooting. Sarah Zachry said in interviews that Ms. Gutierrez-Reed competently did her job as did David Halls. Baldwin said he trusted her. No witness has ever said that Ms. Gutierrez-Reed was hung over on the day of the shooting.

These allegations have been widely reported across the country, causing extreme prejudice to Ms. Gutierrez Reed, yet not one witness has been identified to date who would say that Ms. Gutierrez-Reed was hung over. Counsel asked the prosecutors for names on Wednesday, June 14, and the special prosecutor deferred saying that she was busy the next two days and that she may be able to respond by Friday. In the time it took to draft that email, however, the special prosecutor could have identified any alleged witnesses. More importantly however, the idea that Hannah was "likely" hung over the day of the shooting is recklessly false. She wasn't hung over on the day of the tragic shooting. She wasn't intoxicated the night before and she wasn't impaired in any respect on the day of the shooting. The special prosecutors are aware that impairment type of testimony

requires medical evidence and proof, even beyond a first hand witness with actual knowledge of any drinking the night before. The State has identified no actual admissible evidence to support these bald and incredibly inflammatory accusations which have now been widely reported and again turned public sentiment against Ms. Gutierrez Reed. This has turned into a modern day Salem witch trial.

These prejudicial false claims and false implications of previous “bad acts” are deliberate and malicious attempts in a high profile case to damage Hannah's character and imply guilt to this court, the jury and the general public. The special prosecutors had good reason to know these claims would go to all world wide media.

Counsel for Ms. Gutierrez Reed has faced a Herculean struggle from the beginning to fight false, persistent, extrajudicial statements by prosecutors, law enforcement, and others. Early on, unsubstantiated rumors percolated and were widely reported regarding “live” round target shooting on the Rust set. Yet, no witness has ever come forward to substantiate that rumor and numerous witnesses from the set, including Prop Master Sarah Zachary, have denied it. Counsel are deposing a witness this week who appears to have started or been the origin of these false rumors.

Like the United States Supreme Court acknowledged in a case cited in the motion to dismiss, defense counsel in a high profile case such as this may sometimes be forced to defend their client in the public domain. This has never been as true as in this case when counsel is fighting false rumors, endless statements as to guilt by prosecutors, and a general pouring on of scorn and ridicule onto Ms. Gutierrez Reed. She has faced death threats, calls and e-mails suggesting she kill herself or rot in jail, all because of these extrajudicial statements.

Yet, this is not a justification for prosecutors to provide interviews commenting on the believed guilt of a defendant. That is exactly what has happened here. These extrajudicial statements have

severely prejudiced Ms. Gutierrez Reed. They place her in the impossible place of now proving her innocence against a public cry to “hold her publicly accountable” as even the current prosecutors espouse as the proper result.

The original motion and response cite to rules regarding prosecutors extrajudicial statements. The rules are designed to be stricter for prosecutors because the state has a very high duty to do Justice, not to seek a conviction at all costs. Those rules have been repeatedly violated in this case as demonstrated in the motion to dismiss and with the most recent filing, which contained highly prejudicial and false allegations that will never be admissible and which are designed to and will undoubtedly prejudice a future jury panel. These violations are enough standing alone to dismiss this case.

## **II. THE STATE HAS FUNDAMENTALLY MISUNDERSTOOD ITS OBLIGATIONS TO DISCLOSE EXCULPATORY EVIDENCE**

The State’s response also shows a fundamental misunderstanding of exculpatory evidence. In the beginning of their response they state as the basis for the charges against Hannah:

“Rust” movie production hired Defendant Hannah Gutierrez as the Armorer on the movie set, and as such she was responsible for checking the firearm and ammunition prior to each use to ensure that live rounds never made their way into the firearm. Defendant Gutierrez failed at this simple task and Ms. Hutchens died as a result.

Later in the response the State clarifies their view of this “failure”:

“All Defendant Gutierrez needed to do was shake every bullet and make sure it rattled before putting it in the gun – she failed and killed someone.”

Then towards the end of the response they shockingly admit the following:

“There is a round of ammunition in evidence that appears to be a “dummy” round but does not make a sound as a “dummy” round should. This round and many other pieces

of evidence have been sent to the State's independent expert for testing as defense counsel is well aware (defense counsel approved the state's motion to transfer evidence from the Santa Fe Sheriff to Lucien Haag). *There is no reason to believe this evidence is exculpatory but the parties will have the answer soon enough.*"

In other words, the State wants to hold Ms. Gutierrez Reed singularly responsible to one standard, of ensuring perfection in the shaking of rounds, when it admits that there is at least one round seized from the Rust set that was incapable of determining its "dummy" or "live" status, except by resort to expert analysis. This is absolutely exculpatory because it goes to the question as to whether all "dummy" rounds on the Rust set "rattled."

As an additional example, the State admits that: "Based on the information presented by counsel for Defendant Baldwin, the special prosecutors determined there were serious issues concerning the evidence which warranted further investigation and consequently they entered a nolle prosequi in the Baldwin matter." This "serious evidence" the State refers to a claimed modification of the firearm, introducing an "intervening cause", as to Baldwin apparently not knowing the firearm would fire in the manner that it did. Yet, if this evidence is exculpatory as to Baldwin, it is even more exculpatory as to Ms. Gutierrez Reed, who handed the gun off to Halls, and then did not have possession of that firearm or know it would be used by Baldwin in an impromptu rehearsal 15 minutes after the hand off. While the State tries to dress up their reasoning for picking and choosing defendants to hold accountable, it boils down to this: we aren't going to apply even handed Justice or even consider identifying and disclosing exculpatory evidence as to Ms. Gutierrez Reed; rather, we need a villain so we are picking a scapegoat in Ms. Gutierrez Reed.

The State also asserts that it provided Ms. Gutierrez Reed and Baldwin equal opportunity to present exculpatory evidence in a meeting. Yet, the state refused to talk to an NRA instructor,

reloading and firearms expert for Ms. Gutierrez Reed and denied discussion of obvious facts like the trigger pull claims and "modified gun". This led to her making the patently false claim in the filing that both blanks and dummies are made from live cartridges, neither being true with quality suppliers. Blanks are made in special crimped cases, totally unusable for live rounds and professionally made dummies are almost always made of new brass, either with no primer, a rubber primer or a dented primer.

The State still has a fundamental misunderstanding of basic facts because it has never explored Ms. Gutierrez Reed's evidence in detail. As a further example, special prosecutors refused to interview key witnesses on the origin of the live rounds, which defense counsel provided and said would make available. These witnesses would draw a line from the original transfer of those live rounds to an ammunition supplier to the Rust set. It also has failed to explore the bases and evidence of animus against Ms. Gutierrez Reed and why someone may have introduced live rounds onto the Rust set. The evidence is there and has always been there if the State wasn't so singularly focused on scapegoating Ms. Gutierrez Reed.

### **III. JURISDICTIONAL FLAWS FATALLY TAINT THIS PROSECUTION**

The State tacitly admits that the first amended information was fatally flawed because it was signed by DA Carmack Altweis at a time when she lacked authority to sign it. What the State fundamentally misunderstands however, is the principle of *Hollenbeck* and a lack of jurisdiction. This isn't a mere ministerial error that can be corrected by a simple filing of a second amended information. This goes to a complicated series of actions taken by prosecutors at a time when they lacked jurisdiction and authority to take them.

The State now admits:

The previous prosecution team interviewed two witnesses, David Halls and Sarah Zachry. There is nothing unusual or extraordinary about prosecutors taking proffers from potential witnesses or co-defendants. The previous prosecutors consulted with one expert witness, Bryan Carpenter. Mr. Carpenter was hired as a consultant and possible expert witness so that the prosecution could be educated about the duties of an armorer, producer and other roles held by movie set crew members. The consultation with Mr. Carpenter was (and still is) more than appropriate.

The State also admits that during this time the State signed a plea deal with David Halls, and may call him as a witness for the State against Ms. Gutierrez Reed. This entire plea deal and agreement to testify was entered into between Halls and DA Carmack Altweis - completely without jurisdictional basis or authority. This plea deal is unauthorized. The proffer interviews of Sarah Zachary and David Halls and hiring of expert witness Carpenter were tainted during this process where the state proceeded without proper jurisdictional authority. This is not a simple fix of waving a wand and saying forget about the past, it's over now. Lack of jurisdiction and authority are far more important, and broader problems, which have now tainted this prosecution and severely prejudiced Ms. Gutierrez Reed. An evidentiary hearing is required to determine the extent of the prior prosecutors involvement and investigation and steering of the case, which carries over into the ongoing prosecution.

#### **IV. Cumulative Error**

The State derides the motion to dismiss as a “kitchen sink” approach. Yet, this is sadly necessary and warranted due to the numerous fundamental and constitutional errors made by the State. This began with the State filing an *ex post facto* gun enhancement, an elementary and basic error. It has persisted through false and inflammatory pretrial statements, failures to provide

exculpatory evidence, and having prosecutors take important actions while lacking all jurisdiction to do so. This case is fatally tainted, for all the reasons discussed herein and in the original motion and must be dismissed.

Respectfully submitted,

/s/ Jason Bowles

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing pleading was sent through the ESF system, which caused the following parties to be served by electronic means, as reflected on the Notice of Electronic Filing this 15<sup>th</sup> day of June, 2023, to the counsel listed below:

Kari Morrisey

Jason Lewis

Special Prosecutors

1<sup>st</sup> Judicial District Attorney's Office

/s/ Jason Bowles

Jason Bowles

Bowles Law Firm