

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO,

No: D-202-CR-2026-00405

Plaintiff,

vs.

TIMOTHY BUSFIELD,

Defendant.

**STATE'S RESPONSE TO DEFENDANT'S MOTION TO QUASH GRAND JURY
INDICTMENT**

The State of New Mexico, through Chief Deputy District Attorney Greer E. Staley, hereby responds to Defendant's Motion to Quash Grand Jury Indictment and requests this court deny the Motion. As support, the State submits to the Court that the defendant's motion fails for several reasons. First, defense made a strategic choice to disregard the 24-hour notice requirement which outlines the evidence they wish to present to the grand jury pursuant to *Jones v. Murdoch* in order to avoid judicial review of the evidence. *Jones v. Murdoch*, 2009-NMSC-002. Second, the evidence the defendant claims was not presented was in fact made known to the grand jury. Third, the State remained a neutral aid to the grand jury throughout the process despite the defendant's attempts to circumvent proper procedure. Finally, no misstatements of law were made during the presentation.

I. Defense Intentionally Elected Not to Follow the Supreme Court Mandated Procedure Required by *Jones v. Murdoch*.

Seventeen years ago, our Supreme Court established clear procedures that guide grand jury proceedings, specifically when a target is requesting evidence be presented, including proposed witnesses, and this procedure necessarily involves judicial oversight. § 31-6-11(B), NMSA, provides that the target of the grand jury “may alert the grand jury to the existence of evidence that would disprove or reduce an accusation” but requires that this takes place “[a]t least twenty-four hours before grand jury proceedings begin. In 2009, the Supreme Court was “called upon to clarify how the target of a grand jury investigation may alert the grand jury to the existence of exculpatory evidence.” *Jones*, ¶ 1. In *Jones*, the State and target had an evidentiary dispute regarding the target’s proposed evidence and the Court highlighted the value of a pre-indictment remedy for targets that “focuses on whether the evidence the target wants before the grand jury meets the appropriate evidentiary standard.” *Id.*, ¶ 20. The Court found clear legislative intent that the twenty-four-hour requirement in §31-6-11(B) was “to give the prosecutor time to screen the target’s tendered evidence before the commencement of the grand jury proceeding” and provide “a small window of time to identify evidentiary disputes before the commencement of the grand jury proceeding” before a grand jury judge. *Id.*, ¶¶ 27-20. The Supreme Court in *Jones* outlines “the importance of a clear procedure for notifying the prosecutor” and a mechanism for the prosecutor to alert the grand jury judge of any dispute regarding the target’s proposed evidence. *Id.* at ¶¶ 34-35.

Our courts have been extremely clear that they are the deciders as to what information comes before the grand jury. Defense has conceded that they intentionally elected not to follow the procedure to alert the State regarding his proposed evidence which would have invoked

judicial oversight. Counsel is aware of the requirements in *Jones*, stating to the prosecution at the pretrial detention hearing on January 20, 2026, that they had been waiting on receipt of the target letter to file a “Bort Jones.” In fact, upon realizing that the Defendant had not provided his personally served target letter to his attorneys, the State elected to postpone the grand jury presentation to give defense ample time to prepare this motion, moving it from January 20th to February 5th.

Defendant argues that they “used a separate process” to attempt to introduce their evidence before the grand jury. This “pathway,” which is unsupported by law, is a conflation of §31-6-11(C), the right of the target to personally testify with §31-6-11(B), which, together with *Jones*, guides the procedure for introducing exhibits and witnesses to the grand jury. Defense claims without authority that if a target is testifying, the target can produce **any** evidence he wants directly to the grand jury and bring any witnesses to the proceeding to testify without the judicial oversight contemplated in *Jones* process. Targets don’t directly present evidence to the grand jury, the State provides the evidence after the opportunity for oversight.

By ignoring the requirement of the grand jury alert letter, Defense intentionally placed the defendant in the very position *Jones* was written to avoid. Defense now attempts to exploit this strategic avoidance of the outlined procedure. Counsel and defendant’s intent was evidenced both by the presence of witnesses, the prepared exhibits, and by defendant’s testimony such as: “I was told I could offer [the grand jurors] things to read that would exonerate me” [Tr. 121]. while offering them documents. The idea was to avoid judicial oversight of their proposed evidence in an effort to sway the grand jurors out of a finding of probable cause, or later file the very motion the State responds to here claiming their evidence was blocked and they were denied a fair proceeding. Defense seems to understand they come to the court with unclean

hands, almost abandoning their arguments that the State should have presented their unvetted documents on page 31 of their motion where they concede the issue stating, “Mr. Busfield does not argue that Mr. Speer was obligated to independently present the WB investigation, the polygraph report, or the witness affidavits to the grand jury.” They appear to remain committed, however, to the idea that the defendant himself can produce any discovery he wants to the grand jury without judicial review, which plainly runs afoul of *Jones*.

II. All of Defendant’s Proposed Evidence Was Put Before the Grand Jury.

Defendant testified before the grand jury at length and offered all of his evidence to them via his testimony. Defendant complains about an “extensive and combative cross examination” and that the State’s prosecutor was obstructive during Defendant’s testimony. That is not an accurate account of the actual proceeding. Defendant’s Exhibit E in its entirety demonstrates the detailed testimony the defendant presented on his own behalf. He engaged in several instances where he presented lengthy narratives to the grand jurors that explained his side of the story, he made passionate assertions of his innocence, discussed passing a polygraph test, discussed the Warner Bros. investigation, gave his theory of retaliation by the victim’s parents, told the jurors the victim’s parents were criminals, and described in detail what each of his witnesses would say on his behalf. [see Tr. 124-5, 129-132, 141-142]. This is not akin to *Herrera v. Sanchez*, where the State’s attorney did not allow the target to answer a grand juror’s question during her testimony related to her defense. *Herrera v. Sanchez*, 2014-NMSC-018. In fact, Exhibit E demonstrates that the grand jurors extensively questioned the defendant. Defendant’s testimony encompassed every aspect of his defense, and the transcript does not support any claims that he was controlled or prevented from engaging in his own narrative. To the extent defense takes issue with the State’s attorney’s tone, the issue seems to be truly that the prosecutor asked

clarifying and follow up questions. The State's role is to be an aid to the grand jury, and it was proper to redirect the target when he attempted to hand exhibits to the jurors. [Tr. 94].

a. Defendant testified many times that he was never alone with the children and that his witnesses would say the same.

Defense argues that he was cut off when attempting to explain he was never alone with children and the "implausibility of committing a sexual offense in the midst of directing within that environment." In fact, this was testified to repeatedly. Detective Brown testified that Busfield told him in a phone interview that the children were "always supervised by a teacher or a welfare worker or a parent." [Tr. 28-29]. Busfield himself testified about this numerous times: "I was never, ever, ever once alone with these children, ever. Never happened. Couldn't have happened. Against the rule. Not ever once." [Tr. 86]. "So the idea that the child was ever alone in a bed, on a set, unattended was impossible." [Tr. 88]. "There is always somebody to cover the kids." [Tr. 89]. "But the child is never unattended by anybody." [Tr. 89]. "I have many documents, sworn documents, of people saying that there was – they were never alone, and couldn't be alone." [Tr. 89-90]. In discussing his witness Ollech, he stated "she's here, here statement is here. And she will – was the nurse that was putting in the children in and out of the bed. And she said there was no way that we were alone." [Tr. 90]. "And the people that were there on the set for all four years will tell you they were never alone." [Tr. 90]. "There would be somebody – if I went into a room with one of the children and closed myself in the room, that would be unprecedented, and it would have been noted by somebody that would have seen that." [Tr. 92]. The State's attorney even asked him about this directly: "Essentially, a big point is you're claiming you were never alone with those children; is that correct?" Busfield responded "...yes, I was never, ever, once – yes, alone. I was never, ever once ever alone with those boys." [Tr. 95]. This is merely a sample of his testimony, as there are other instances where Busfield

tells the jurors he was never alone or that his witnesses would testify to the same. [Tr. 125, 132-133, 139, 171, 196].

b. Defendant was not prevented from testifying about “anyone else’s knowledge or statement.”

Defense’s motion describes how the defendant named the waiting witnesses and what they could contribute to his defense. The transcript reflects that he extensively discussed their proposed testimony during the proceeding.

- a. **Alan Caudillo** [See Tr. 82, 111, 113, 117, 122, 125, 127, 130, 166, 174, 178, 179, 180, 202]. Busfield was able to repeatedly tell the jurors that Caudillo was with him all the time and would have known if something happened. Detective Brown also testified that Caudillo testified in the detention hearing in this matter that “he was with Timothy Busfield a hundred percent of the time. And he said there is no possible way that Mr. Busfield could have touched anybody without him knowing.” [Tr. P. 214, 216].
- b. **Jessica Ollech** [See Tr. 90, 121, 165]. Busfield was able to tell the jurors that Ollech was the nurse on set and that her statement was that he was never alone with the children.
- c. **Chris Ford** [See Tr. 99, 117, 121, 125, 142, 150, 171, 190]. Busfield testified repeatedly that Ford made a statement that he knew the children’s mother wanted revenge, or for him to be cancelled, and that he could never have been alone with the children.
- d. **Kirstin Karr** [See Tr. 104, 117, 118, 119, 121, 127, 172, 181, 182-183, 204]. Busfield testified that Karr would testify that he was never alone with the

children, that she knew about the children's temperaments. Busfield even reads verbatim a portion of her sworn statement to the grand jury which is quoted in on Tr. P. 172.

- e. **Copper Perry.** [See Tr. 104, 127, 180-181]. Busfield testified to the jurors that Perry could describe the boy's temperaments, that they didn't want to be on set but were forced by their parents, and that the boys told her everything.
- f. **Joe Lotito** [See Tr. 103, 117, 125-126, 127, 167, 203]. Busfield testified that Lotito would have known if there were any complaints regarding behavior on set, that he was never alone with the children, and that there were no accusations "of inappropriate anything" and that it would have been "impossible" for him to sexually assault the children. [Tr. 125-126].
- g. **Jonathan Pierangeli** [See Tr. 7-8, 56-57, 61, 91, 117, 185, 204]. The information that Busfield hired a Pierangeli and passed a polygraph administered by him was presented to the grand jury and referenced by Busfield who stated, "I took that polygraph, and I passed it." [Tr. 91].

III. The Grand Jury was Properly Instructed that Polygraph Evidence is Admissible in New Mexico, and Discussion Regarding its Veracity was Proper and Contemplated by the Supreme Court.

The transcript produced as Defendant's Exhibit E is incorrect with regard to the question posed by the State to the defendant. State's counsel did not, as the transcript says on page 94, ask "[y]ou're aware that it's not allowed in this state; correct?" The actual question as reflected in the audio was: "[y]ou are aware it's not, uh, allowed in most states, correct?" Defendant's Exhibit F

is missing the audio that corresponds to transcript pages 75-119, but it was found in the audio produced to the State by the Court in Court labeled Track 3, at 23:20.

The State questioned the Detective about his knowledge of the polygraph examination and directly asked: “[i]s it your understanding that lie detector tests, polygraph, whichever one you call them, are – that New Mexico is the only state that allows them without significant restrictions?” [Tr. P. 7]. There is an entire discussion of polygraph examinations after this, all of which correctly reflects that polygraphs are disfavored by almost all states, but admissible in New Mexico. The case cited by Defense, *State v. Stephens*, discusses the shaky ground that our State stands on regarding admissibility of polygraph since “scientific evidence revealed some potential problems with the use of polygraph results at trial.” *Stephens*, 2026-NMCA-006, ¶ 25. The *Stephens* Court held that the resolution to those issues “for the opponent of polygraph evidence is not exclusion; the remedy is cross-examination, presentation of rebuttal evidence and argumentation.” *Id.* (quoting *Lee v. Martinez*, 2004-NMSC-027). In *Lee* our Supreme Court concluded that polygraph results are “far from conclusive,” but may show deception rates “well above chance.” *Lee v. Martinez*, 2004-NMSC-027, ¶ 32. The State properly presented a balanced view of polygraphs including the realities of it being disfavored and widely inadmissible. Given our Supreme Court concedes it is an imperfect science, there is no requirement of the State to present Mr. Busfield’s polygraph results as dispositive of his innocence, and doing so would be misleading. “A prosecutor has no duty to present circumstantial evidence on which a target might defend against a charge” *State v. Augustin M.*, 2003-NMCA-065, ¶ 24.

IV. The State Correctly Instructed the Grand Jurors on the Law Regarding the Process for Subpoenaing of Witnesses

Defense argues that the State should have called in the witnesses who were waiting in the hall and that its instruction to the grand jury regarding §31-6-12 was a misstatement of law. The State correctly instructed the grand jury on how to call witnesses. §31-6-12 does not apply to “unwilling” witnesses, but to all witnesses the Grand Jury wishes to call. The 36-hour notice requirement ensures the procedural rights of the witnesses and provides a timeframe where the court can intervene if the evidence does not meet the evidentiary requirements. “Evidence before the grand jury upon which it may find an indictment is that which is lawful, competent and relevant, including the oral testimony of witnesses . . .” §31-6-11.

Defense’s is asking the State and the Court to assume that the witnesses were aware of and forfeited the procedural safeguards in §31-6-12 based on the defendant’s word. It is safe to say they are not represented by Defendant’s counsel, and it is impossible for the State to know the circumstances of their presence at the grand jury proceeding. Their presence does not absolve the grand jury from the procedure in §31-6-12, nor does it allow the State to advise the grand jury they can ignore that requirement. “In matters relating to the grand jury process, the prosecutor does not have discretion, and the courts do not defer to any decision the prosecutor makes if that decision was not in compliance with the law.” *State v. Yaw*, 2011-NMCA-023, ¶ 11. (*citing State v. Ulibarri*, 1999-NMCA-142). The grand jurors were made aware of the legal process and elected not to utilize it.

This argument is a mere extension of the Defendant’s gamesmanship intended to avoid judicial oversight regarding what evidence the grand jury was alerted to. If defense truly wanted these witnesses to testify, and they met the evidentiary requirements of §31-6-11, they would have sent a grand jury alert letter and the Court could have made appropriate rulings.

V. The State Remained Neutral Throughout the Proceedings.

The target of the grand jury is questioned like any other witness. §31-6-7 states in part, “the district attorney or his assistants shall attend the grand jury, examine witnesses . . .” In fact, the advice of rights read to targets by the foreperson begins with: “[b]efore you are asked any questions, I will advise you of your rights as a target of the Grand Jury investigation.” [Tr. 75].

The crux of Defendant’s complaints is that he was redirected when he repeatedly offered up witnesses and exhibits in violation of *Jones* and when he repeated the same testimony to the jurors. State’s counsel remained measured in tone and asked appropriate follow-up and clarifying questions. While the defense may not have liked the questions that clarified the defendant’s narratives, it is the role of the State as an aid to the grand jury not to merely accept the defendant’s testimony at face value, but to ask relevant questions. It is also the role of the State to guide the presentation, and redirecting the defendant to new topics when he was repeating himself is proper. The approximate hour of audio missing from Defense Exhibit F demonstrates the calm tone and reasonable demeanor of the State during the presentation. The included audio in Defense F further demonstrates the State’s neutral tone. While defense frames their narrative to make it sound like there was irritation or sarcasm on the part of the State, that is untrue. As an example, the State encourages the Court to listen to Defense Exhibit F, Disk 3, beginning at 12:30 where the Defendant inquires into possible time constraints with the State. The State’s response of “I’m sure you do” in response to the defendant is completely devoid of sarcasm. Defendant then proceeds on a lengthy narrative. Defense’s framing of the defendant being “thrown-off” and “apologetic,” do not rise to a showing that the State lacked neutrality. In fact, the defendant seemed apologetic as a verbal pause rather than an indication of distress, stating “sorry” or “I’m sorry” nearly thirty times during the presentation. This includes apologizing

during his responses to the grand juror's questions. [Tr. 145, 147, 148, 174, 178, 186, 191, 192, 226].

Defense takes issue with the phrase "take fiction and make it real." This, in reality, came from Defendant's own testimony that he believed the victims were coached by their parents whose jobs "was making the kids take fiction and making it sound real." [Tr. 108]. The State followed up on this and the Defendant reiterated the goal of an actor is to make an audience "believe what they say." The State then fairly asked if that would apply to his lie detector test, which the defendant refuted with a lengthy explanation. As noted above, the defendant's polygraph results and witness Pierangeli's proposed testimony was communicated to the grand jury multiple times. [Tr. 7-8, 56-58, 61, 91, 94, 110, 117, 122, 185, 204].

All of defendant's evidence was offered to the grand jury through his testimony. He was not time constrained. He testified for approximately an hour and a half before grand jurors began questioning him. The grand jury then questioned him for approximately an hour and twelve minutes. Defendant was not rushed.

VI. Defense is not Entitled to the Relief Sought, as any Claimed Error was Invited.

The defense could have followed the procedure in *Jones*, which they are clearly aware of, and the court could have ruled on these matters before the presentation as our Supreme Court intended. This Court should inquire with the defense why they intentionally disregarded this process, as they have offered no legally valid explanation. They invited every issue they now complain about, which was likely part of the strategy. Defense is asking this court to find that testifying targets of the grand jury should be allowed to freely present whatever evidence they want. They argue that any challenges by the State should be handled by halting the proceeding, pulling the grand jury judge from their other duties, and the issues litigated on the spot. The way

this presentation progressed, if the process went the way defense suggested, the State would have had to make multiple motions during the course of the presentation. If this is allowable and other targets begin utilizing this “alternative” process, grand jury time will necessarily have to be increased, and the entire intent of *Jones* will be lost. “Courts do not want exclusionary rules, suppression hearings, evidentiary rules or mini-trials to disrupt or delay the grand jury's function.” *Buzbee v. Donnelly*, 1981-NMSC-097, ¶ 53. Granting defense’s motion will certainly encourage counsel and others to try this again in the future, essentially rendering *Jones* inapplicable in the 2nd Judicial District.

Defense argues that *Herrera* allows for the introduction of exhibits and witnesses without the *Jones* process, but that is a clear misstatement of its holding. The Supreme Court in *Herrera* actually reiterates the necessity of the *Jones* process:

If the target timely submits a grand jury alert notice to the prosecutor, the prosecutor is obligated to alert the grand jury to any target-offered evidence that is "lawful, competent and relevant," § 31-6-11(A), and "that would disprove or reduce [an] accusation or . . . make an indictment unjustified," § 31-6-11(B). See *Jones v. Murdoch*, 2009-NMSC-002, ¶ 33, 145 N.M. 473, 200 P.3d 523; Rule 5-302A(B)(3). Our grand jury statutes require only that the prosecuting attorney alert the grand jury to the existence of target-offered evidence and do not require the prosecutor to actually present such evidence. See *Jones*, 2009-NMSC-002, ¶¶ 12, 24, 145 N.M. 473, 200 P.3d 523. Once alerted to target-offered evidence, "the grand jury remains free to decide not to hear the evidence . . . or to hear the evidence and weigh it as it sees fit." *Id.* ¶ 12.

Herrera, ¶ 30.

Herrera also points out the prosecutor's role in strict adherence to the procedural rules and that "the target's participation is confined to testifying, if the target chooses to do so, and to asking the prosecuting attorney to alert the grand jury to exculpatory evidence and possible defenses" pursuant to §31-6-11(B), which is governed by *Jones*. See *Id.* ¶¶15-16, 19-20. To repeat an important line from *Augustin M.*, "[a] prosecutor has no duty to present circumstantial evidence on which a target might defend against a charge" *Augustin M.*, ¶ 24.

Here, defense put the State in the position of having to navigate the defendant's continuous offer of unvetted evidence to the grand jurors. Defense intentionally placed the State in a pre-*Jones* situation, having to engage in our screening function to evaluate whether the evidence met the evidentiary standards set forth in §31-6-11 in real time without the benefit of judicial rulings to guide the presentation. To later claim that they were somehow wronged when their exhibits and witnesses did not directly make it into the hands of the jury flies in the face of established procedure and decorum.

The holding in *Jones*, "identifies the prosecutor as the conduit by which a target may alert the grand jury to pertinent evidence." *Jones*, ¶ 24. Defense ignored the plain language of §31-6-11(B) and the legislative intent of that rule to "give the prosecutor time to screen the target's tendered evidence before the commencement of the grand jury proceeding." *Id.*, ¶ 27 (emphasis added). There is no "pathway" under the law by which the Defendant can ignore this process, like they did here. Allowing this would frustrate the entire purpose of *Jones* which was to "fashion a mechanism to resolve disputes under §31-6-11(B)" that avoids "the potential burden on the judiciary flowing from evidentiary disputes . . ." *Id.* ¶ 29, 30.

The State correctly informed the grand jurors on the law regarding the *Jones* process, since it became relevant due to the Defense's actions. The State then redirected the proceeding back to questions of the target. *State v. Martinez* provides the framework that comments to the grand jury explaining "grand jury procedures concerning a target witness . . ." are not improper. *State v. Martinez*, 1982-NMCA-002, ¶ 6. Any mid-presentation evidentiary dispute was entirely foreseeable and created by defense, and the State properly used its discretion to guide the presentation. The Court of Appeals has held:

We 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.

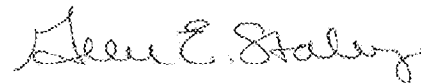
State v. Yaw, 2011-NMCA-023, ¶11 (*internal citations omitted*)

The State's decision not to call witnesses whose proposed testimony had been presented to the jurors when defense did not avail themselves of the proper procedures in *Jones* does not rise to bad faith, and therefore, defendant is not entitled to the indictment being quashed. *See Id.* Furthermore, the recall of the Detective to resolve inconsistencies by testifying about admissible evidence after a target testifies in a grand jury is routine and in no way rises to advocacy. Presenting relevant evidence for the grand jury, even if contrary to the defendant's testimony, is proper.

Defendant has not shown any prejudice, nor any “perjury, deceit or malicious overreaching found to be essential” for an attack on an indictment. *Buzbee v. Donnelly*, 1981-NMSC-091, ¶ 86. “There is no post-indictment relief for a defendant once the grand jury returns an indictment absent a showing of prosecutorial bad faith.” *Yaw*, ¶11. Defendant intentionally created chaos within the grand jury proceeding. The State remained calm, redirected the defendant’s improper and repeated attempts to introduce his exhibits and evidence directly to the grand jury, properly instructed the grand jury on the law, presented a balanced picture of the evidence, and allowed the defendant to testify freely regarding all of his defenses. “[C]ase law is soundly premised on the principle that dismissal of an indictment for prosecutorial misconduct is an extraordinary remedy to be granted cautiously to avoid judicial encroachment upon the historically independent function of the grand jury.” *State v. Juarez*, 1990-NMCA-021, ¶26.

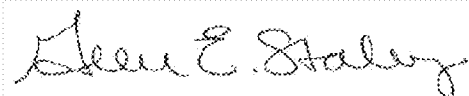
WHEREFORE, the State requests that this Court deny Defendant’s Motion to Quash the Grand Jury Indictment.

Respectfully Submitted,



GREER E. STALEY
CHIEF DEPUTY DISTRICT ATTORNEY

I hereby certify that a copy of the foregoing was sent to counsel for the defendant Amber Fayerberg and Christopher Dodd via email on June 25, 2026.



CHIEF DEPUTY DISTRICT ATTORNEY