

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO,

Plaintiff,

v.

D-202-CR-2026-00405

TIMOTHY BUSFIELD,

Defendant.

ORDER ON DEFENDANT'S MOTION TO QUASH GRAND JURY INDICTMENT

THIS MATTER came before the Court on *Defendant's Motion to Quash Grand Jury Indictment* filed June 15, 2026, State's *Response* filed June 25, 2026, Defendant's *Reply* filed June 30, 2026, and heard on September 25, 2026. The Court, having reviewed the pleadings, exhibits, arguments of counsel, and being otherwise fully advised **HEREBY FINDS** and **ORDERS** as follows:

1. On February 5, 2026, a grand jury indicted Defendant with four counts of criminal sexual contact of a minor.
2. The only witnesses appearing before the grand jury were Detective Marvin Brown and Defendant.
3. Defendant did not submit a *Bort-Jones* request for the prosecutor to alert the grand jury to exculpatory evidence.
4. During his testimony before the grand jury, Defendant testified about an independent investigation conducted by Warner Bros., a polygraph examination he had undergone, and the availability of other witnesses who were present that day to testify if called.

5. Defendant filed his *Motion to Quash* arguing that the grand jury prosecutor abandoned his role as a neutral aide to the grand jury, misstated the law, and blocked the grand jury access to witnesses.
 - a. Defendant argues the grand jury prosecutor conducted an adversarial cross-examination while suppressing and mischaracterizing exculpatory evidence, and impugned the character of Defendant and defense counsel before the grand jury;
 - b. The prosecutor misrepresented the admissibility of polygraph evidence and misrepresented the process for calling additional witnesses.
6. At the September 25, 2026, hearing, the Court heard testimony from eight witnesses who were present and available the day of the grand jury hearing for this case, that they were willing to testify if called, and that the prosecutor had seen them sitting in the hallway all day.
7. On at least three separate occasions several grand jurors indicated a desire to hear from other witnesses—at one point, specifically naming Alan Caudillo who was present and available to testify. Even after the State recalled Detective Brown to testify, in part, about Mr. Caudillo's testimony during the pre-trial detention hearing, the grand jurors still asked to hear from other witnesses. The prosecutor ultimately informed the jurors that eight of them would have to agree the witness was necessary and then all twelve would have to agree to return for further testimony because the State needed to issue subpoenas to the witnesses at least 36-hours in advance of their testimony. After this statement regarding the procedure for calling additional witnesses, no further requests to hear from witnesses were made.

8. The State argues that the defense manufactured the error they complain of by failing to follow the procedure set forth in *Jones*, putting the State in the untenable position of dealing with unnoticed evidence.
9. The State further argues that all the evidence Defendant wanted the grand jury to hear was presented through his testimony.
10. The State also asserts it properly instructed the grand jury on the procedure for hearing from witnesses and the grand jury never asked to hear from witnesses once informed of the procedure.

ANALYSIS

“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. “If 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.” *Id.* ¶ 15; *see also Davis v. Traub*, 1977-NMSC-049, ¶ 5, 90 N.M. 498, 565 P.2d 1015 (noting “[w]e will not permit anyone to circumvent the letter or the spirit of [the grand jury] laws”). “If 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.” *Herrera*, 2014-NMSC-018, ¶ 17. Further, “[o]ur grand jury statutes require the prosecuting attorney to act ‘in a fair and impartial manner at all times during grand jury proceedings,’ including when instructing the grand jury on applicable law.” *Id.* ¶ 28; *see also*

DeLeon v. Hartley, 2014-NMSC-005, ¶ 8, 316 P.3d 896 (“[i]f the grand jury is to play any role at all as a credible, independent entity charged with determining whether the prosecution has probable cause to go forward with criminal charges against the accused, the grand jury must remain free of the taint that would come from being perceived to be under the complete and absolute control of the prosecutor.”).

Jones v. Murdoch, recognized “the 2003 amendments to Section 31-6-11(B) were intended to give the grand jury more information about evidence bearing on the issue of probable cause.” 2009-NMSC-002, ¶¶ 4, 28, 145 N.M. 473, 200 P.3d 523. The *Jones* Court delineated the procedure for “resolving disputes between the target and prosecuting attorney concerning whether to alert the grand jury to the existence of evidence the target wants the grand jury to consider.” *Id.* ¶ 5. In *Herrera*, the Court addressed the *Jones* procedure, holding that “[a]lthough the prosecutor performs a screening function to evaluate whether any target-offered evidence meets the evidentiary standard set forth in Section 31-6-11, the prosecutor lacks discretion to unilaterally withhold such evidence from the grand jury.” 2014-NMSC-018, ¶ 21. In that case, the grand jury judge ruled that the prosecutor did not need to alert the grand jury to certain evidence but “did not purport to limit [the target’s] own testimony before the grand jury, which she had a statutory right to present, or preclude the grand jury from inquiring about domestic abuse on its own initiative.” *Id.* ¶ 23. The Court held “[b]y preventing [the target] from answering a direct, relevant question from a grand juror, the prosecuting attorney interfered with the grand jury’s statutory duty to make an independent inquiry into the evidence supporting a determination of probable cause.” *Id.* ¶ 24. Further, “[w]hen serving as an aide to the grand jury, a prosecuting attorney must facilitate the grand jury’s inquiry into any lawful, relevant, and competent evidence not initially presented by

the State and cannot unilaterally withhold evidence or witnesses requested by the grand jury.” *Id.* ¶ 25.

In this case, in response to requests from several grand jurors about hearing from additional witnesses, the prosecuting attorney cited to NMSA 1978, Section 31-6-12, informing the grand jurors a subpoena was needed which would require thirty-six hours’ notice. The prosecutor did not inform the jurors a shorter period could be approved by the judge or that a subpoena is not required for witnesses who willingly appear. Further, the prosecutor informed the grand jurors of a procedure, not provided for by either rule or statute, that required first that eight jurors would need to agree to hear from the witness and then twelve jurors would need to agree to return after thirty-six hours for further testimony. The State did not provide any explanation at the September 25th hearing for the instruction that eight jurors would have to agree to hear from the witness or that all twelve would have to agree to return. The actions by the State did not facilitate the grand jury’s inquiry and its citation to an unknown procedure had the practical effect of unilaterally withholding witnesses requested by the grand jurors.

The State argues that granting Defendant’s relief will result in unnecessary litigation during grand jury proceedings and that Defendant’s failure to follow the procedure outlined in *Jones* created the error for which he now complains. The State is correct that if Defendant wanted to alert the grand jury to exculpatory evidence or a relevant defense, the proper procedure for doing so is outlined in *Jones*. Defendant, however, did not follow such procedure. Had the prosecutor raised an objection to the target-offered evidence at any point during Defendant’s testimony or if Defendant were arguing the State failed to present exculpatory evidence, the State’s argument would have more weight. However, the issue before the Court is not whether the grand jury was properly alerted to the target-offered evidence or whether the evidence met the evidentiary standard

in Section 31-6-11 as both Detective Brown and Defendant alerted the grand jurors to the evidence without objection. The issue presented is that once alerted, the grand jurors requested to hear from witnesses not presented by the State, and the prosecutor used an unexplained procedure and an incomplete explanation of the subpoena requirement to unilaterally withhold evidence from the grand jury. *See Herrera*, 2014-NMSC-018, ¶ 21. These actions are not in line with either the letter or the spirit of the grand jury laws. To the extent delays may result when the prosecutor disputes evidence requested by grand jurors—after they have been alerted to the evidence without objection—the Court finds the reliability of the grand jury system and the intent that grand jurors be given access to more evidence—as long as it complies with the evidentiary standard—outweighs the potential delay in proceedings. *Cf. Jones*, 2009-NMSC-018, ¶ 32.

CONCLUSION

The prosecuting attorney failed to act in a fair and impartial manner, including the failure to properly instruct the grand jury on the law for calling witnesses and in instructing the grand jurors on a procedure that effectively withheld requested witnesses. In doing so, the grand jury proceedings were conducted in a manner that violated grand jury statutes designed to protect the structural integrity of our grand jury system and the presumption of prejudice applies. The State, however, remains free to institute new criminal proceedings against Defendant. *Herrera*, 2014-NMSC-018, ¶ 32.

IT IS THEREFORE ORDERED that Defendant's *Motion to Quash Indictment* is **GRANTED**.



JOSEPH MONTANO
District Court Judge, Division XXVI