

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,

Defendant.

**STATE'S MOTION IN LIMINE TO PROHIBIT
USE OR TESTIMONY OF OSHB FINDINGS AND REPORT**

COMES NOW, Special prosecutors, Kari T. Morrissey and Jason J. Lewis, who respectfully request this court exclude evidence and testimony related to the findings of the Occupational Health and Safety Bureau (OSHB) and as grounds state as follows:

1. Upon information and belief, the defendant intends to present evidence and/or testimony related to the findings related to the workplace safety violations on the set of *Rust* as determined by New Mexico OSHB.
2. After the fatal shooting on the set of *Rust*, OSHB conducted an investigation and determined that *Rust* Management failed to ensure proper safety procedures on the set as they pertain to firearms. As a result, *Rust* Productions was fined \$100,000.00 by OSHB.
3. Rule 11-403 states "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."

4. Ms. Gutierrez is charged criminally with Involuntary Manslaughter for the death of Halyna Hutchins. Ms. Gutierrez was responsible for firearms and firearm safety on the set of *Rust*. In her capacity as armorer for *Rust*, Ms. Gutierrez was responsible for the safe keeping of firearms, cleaning of firearms, firearms training of the cast of *Rust* and loading and unloading prop guns (in this case real functioning firearms) with dummy and blank ammunition. In this role, the primary goal of an armorer to ensure that no one is injured by a prop gun. Obviously, Ms. Gutierrez failed to ensure that the gun handed to Alec Baldwin was loaded solely with dummy rounds. Moreover, live ammunition is strictly prohibited from being present on movie sets and Ms. Gutierrez was responsible for all of the ammunition on set.
5. The state has developed significant evidence that Ms. Gutierrez brought a box of “dummy” ammunition on the set of *Rust* that contained dummy rounds and live rounds. This is the box of ammunition that Ms. Gutierrez was obtaining rounds from on October 21, 2021 and Ms. Gutierrez acknowledged this during her interview with Santa Fe County Sheriff’s detectives in November 2021.
6. While the dummy rounds and the live rounds were visibly dissimilar, Ms. Gutierrez was unable to distinguish between the two and inserted a live round in the prop gun being used by Alec Baldwin’s character. Mr. Baldwin manipulated the gun during a pre-filming procedure called “blocking” and the gun discharged.
7. The defendant will likely attempt to use the findings by OSHB to try to minimize her culpability and argue that she is not responsible for the shooting, and that Rust Management is responsible for safety violations.

8. OSHB was investigating workplace safety issues. The jury in the criminal trial will be asked to determine whether Ms. Gutierrez is guilty of involuntary manslaughter for putting a live round (from a box of dummy rounds that she brought on the set of *Rust*) that was going to be used by an actor in a movie.
9. Moreover, the OSHB findings do not require proof beyond a reasonable doubt. OHSB findings require a finding that an employer demonstrated “plain indifference” to the workplace safety of its employees.
10. Allowing such evidence and testimony in the criminal trial of Ms. Gutierrez will likely result in jury confusion, it will present legal conclusions from the OSHB report before the jury and would be highly prejudicial.
11. Ms. Gutierrez may call witnesses to testify to her defenses but presenting testimony and evidence of a separate legal proceeding, tasked with determining a completely different question of law resulting in findings established by a lesser legal standard should be excluded.
12. Simply put, the jury may be confused by evidence that indicates that a legal finding was issued against Rust Management for safety failures on set while trying to determine whether Ms. Gutierrez is guilty of Involuntary Manslaughter for her own failure to ensure the firearm was safe to be used as a prop by an actor on a movie set.

WHEREFORE, for the above stated reasons the state respectfully requests all evidence and testimony of the OSHB findings be excluded.

Respectfully submitted,

/s/ Kari T. Morrissey

Kari T. Morrissey

Jason J. Lewis

Special Prosecutors

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of January 2024, I served the forgoing pleading to all parties or counsel of record through odyssey file and serve:

/s/ Kari T. Morrissey

Kari T. Morrissey