

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

STATE OF NEW MEXICO,

Plaintiff,

v.

D-101-CR-2024-00013

ALEC BALDWIN,

Defendant.

**STATE'S MOTION IN LIMINE 10 TO PROHIBIT
HEARSAY STATEMENTS ALLEGEDLY MADE BY THE VICTIM**

COMES NOW, Special prosecutors, Kari T. Morrissey and Erlinda O. Johnson, who respectfully request this court exclude evidence and testimony related to alleged statements made by Halyna Hutchins and as grounds state as follows:

1. It is anticipated that the defendant will attempt to elicit impermissible hearsay by having witnesses testify to statements allegedly made by Ms. Hutchins in the moments before she was shot by Alec Baldwin. The anticipated statements concern the testimony from defense witnesses (and possibly the defendant) that Ms. Hutchins instructed Mr. Baldwin where to point the gun thus causing him to point the gun at her and kill her.
2. Presumably the defense will attempt to argue that the supposed statements by Ms. Hutchins are admissible under 11-803(3) NMRA, then-existing mental, emotional, or physical condition. "A statement of the declarant's then existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or

terms of the declarant's will." *Id.* Hearsay statements allegedly made by Ms.

Hutchins should be excluded because they are untrustworthy, intended to provide the defendant's state of mind and not the state of mind of Ms. Hutchins and are irrelevant.

3. On October 21, 2021 there were ten people inside the church at the time of the shooting other than Ms. Hutchins and Mr. Souza. The witnesses are Ross Addiego, Serge Svetnoy, Mamie Mitchell, Doran Curtin, Thomas Gandy, Roman Gandy, Lucas Hussack, Zac Sneesby, David Halls, and Karen Keuhn. Three of these witnesses assert that prior to Mr. Baldwin discharging his gun, Ms. Hutchins told him where to point it or requested some physical action from Mr. Baldwin. Zac Sneesby stated during his pretrial interview that he recalls Ms. Hutchins (and Mr. Souza) say "show me the action," thereby asking Mr. Baldwin to demonstrate the acting sequence planned for the next scene to be filmed. Mr. Gandy stated that Ms. Hutchins told Mr. Baldwin to "pull the gun and point the gun at the camera and cock the gun." Mr. Gandy would testify that while she did not tell him to point the gun at her, rather she told him to point the gun directly at the camera and she was next to the camera. Mr. Hussack asserted that Ms. Hutchins told Mr. Baldwin to "point the gun at the camera," but that she did not tell him to point the gun at her, nor did she tell him to cock the gun. The alleged statements by Ms. Hutchins are untrustworthy. The three witnesses discussed above are the only witnesses out of the eleven surviving witnesses who claim that Ms. Hutchins gave Mr. Baldwin any direction at all concerning the direction in which the gun should be pointed. The other eight witnesses have no recollection of any such statements, this includes Joel Souza and

Reid Russell who were standing shoulder to shoulder with Ms. Hutchins. Moreover, Mr. Sneesby, Mr. Hussack and Mr. Gandy can't seem to agree on exactly what statements they heard Ms. Hutchins give Mr. Baldwin. Statements admitted as exceptions to hearsay must have indicia of trustworthiness before being admitted.

While certain exceptions have language built into the rule that precludes admission if lack of trustworthiness is demonstrated, other do not but have been held by the courts to require an indicium of trustworthiness before being admitted. (*See United State v. Sablan*, 2008 U.S. Dist. LEXIS 23537; 75 Fed. R. Evid. Serv. (Callaghan) 1187 finding statements offered under the exception or then-existing state of mind should be excluded for lack of trustworthiness; *See also State v. Mendez*, 148 N.M. 761; 2010-NMSC-044; 242 P.3d 328 (2010) applying a trustworthiness requirement to hearsay statements made for medical diagnosis under 11-803(D).)

4. The state of mind of Ms. Hutchins is irrelevant and the statements at issue would only be presented by the defendant to be reflective of his own state of mind. The defendant has previously claimed that he and Ms. Hutchins had something in common – they both believed the gun was safe to handle. Even if this were true, Ms. Hutchins had no reason to believe that Mr. Baldwin would point the gun directly at her, cock it and pull the trigger. Mr. Baldwin wishes to admit statements allegedly made by Ms. Hutchins in order to suggest his own state of mind.
5. The New Mexico Supreme Court found that in the context of 11-803(3) the statements concerning the victim's state of mind was irrelevant, but rather only the defendant's state of mind was relevant to the issues. *State v. Leyba* 2012-NMSC-037; 289 P.3d 1215; 2012 N.M. LEXIS 417(2012).

6. The New Mexico Court of Appeals found that “[i]t is not enough that a declarant's statements fall within the state-of-mind hearsay exception, they must also be relevant to some issue in the case. N.M. R. Ann. 11-401 provides that evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in determining the action.” 2018-NMCA-026, 2018-NMCA-026; 458 P.3d 475.
7. New Mexico Courts have held that while evidence demonstrating the declarant's state of mind is admissible as an exception to the rule against hearsay, evidence explaining the reasons for the declarant's state of mind is inadmissible. Although Rule 11-803(3) allows hearsay statements that show the declarant's then existing mental condition, the rule does not permit evidence explaining why the declarant held a particular state of mind. *Id.* at 5-6, 479.

WHEREFORE, for the above-stated reasons, the State respectfully requests the Court exclude the above-described hearsay.

Respectfully submitted,

/s/ Kari T. Morrissey
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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of June 2024, I served the forgoing pleading to all parties or counsel of record through odyssey file and serve and via email:

/s/ Kari T. Morrissey
Kari T. Morrissey

