

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,
Plaintiff,

v.

No. D-101-CR-2024-00013

ALEXANDER RAE BALDWIN III,
Defendant.

**ORDER DENYING STATE'S AMENDED OPPOSED EXPEDITED MOTION FOR USE
IMMUNITY FOR HANNAH GUTIERREZ**

THIS MATTER came before the Court on the State's Amended Opposed Expedited Motion for Use Immunity for Hannah Gutierrez, filed June 3, 2024. Having reviewed the briefing, considered oral argument, and being otherwise fully advised, THE COURT FINDS, CONCLUDES, AND ORDERS:

PROCEDURAL SUMMARY

1. On June 3, 2024, the State filed its State's Amended Opposed Expedited Motion for Use Immunity for Hannah Gutierrez ("Motion for Use Immunity"). On June 7, 2024, Defendant Baldwin filed his Defendant Alec Baldwin's Opposition to the State's Motion for Use Immunity for Hannah Gutierrez ("Defendant's Response"). Further, on June 10, 2024, Nonparty Ms. Hannah Gutierrez filed her Hannah Gutierrez-Reed's Opposition to State's Amended Opposed Expedited Motion for Use Immunity for Hannah Gutierrez ("Gutierrez Brief"). In reply, the State filed its State's Reply to Defendant Alec Baldwin's Response and Hannah Gutierrez'[s] Response to the State's Motion for Use Immunity on June 14, 2024 ("Reply").

2. On June 21, 2024, the Court entertained oral argument on the Motion for Use Immunity. Thereafter, the Court announced its decision to deny the Motion for Use Immunity, and hereby enters its written order in accordance with the Court’s verbal decision.

FACTUAL BACKGROUND

3. On January 31, 2023, in cause no. D-101-CR-2023-00040, the State filed a criminal information against Ms. Hannah Gutierrez in connection with the October 21, 2021 death of Ms. Halyna Hutchins. Following a jury trial, on March 6, 2024, a Santa Fe County jury found Ms. Gutierrez guilty of involuntary manslaughter, and thus criminally responsible for the death of Ms. Hutchins. Subsequently, on April 15, 2024, this Court sentenced Ms. Gutierrez to serve eighteen months of imprisonment in a New Mexico Department of Corrections facility. Ms. Gutierrez has appealed the jury’s verdict, the Court’s sentence, and lodged claims of errors regarding other decisions made by this Court. The Court awaits a mandate from the New Mexico Court of Appeals concerning Ms. Gutierrez’s appeal.
4. On January 19, 2024, a Santa Fe County Grand Jury charged Defendant Baldwin with two alternative counts of involuntary manslaughter in connection with the October 21, 2021 death of Ms. Hutchins.
5. Both the State and Defendant Baldwin have identified Ms. Gutierrez as a potential witness at the upcoming trial of Defendant Baldwin. However, according to the State, during a May 14, 2024 pretrial interview, Ms. Gutierrez “asserted her Fifth Amendment privilege to all substantive questions.” Mot. for Use Immunity ¶ 1.
6. On June 3, 2024, the State filed the instant Motion for Use Immunity. The State argues use immunity for Ms. Gutierrez is necessary because “[t]he jury should hear all of the information Ms. Gutierrez has regarding Mr. Baldwin, both exculpatory and inculpatory

and counsel for both sides should be permitted to fully cross-examine Ms. Gutierrez.” *Id.*

¶ 6. The State explains, “[p]resumably Defendant Baldwin named Ms. Gutierrez as a witness so his counsel can obtain potentially exculpatory information from Ms. Gutierrez that is relevant to the issue of proximate cause.” *Id.* ¶ 2. Further, the State argues, “[i]f Ms. Gutierrez were not compelled to testify by the Court and her statements were to be admitted under [Rule] 11-804 NMRA the State would be unable to cross-examine Ms. Gutierrez about her statements and the State would also be unable to present testimony from Ms. Gutierrez that is inculpatory to Defendant Baldwin.” *Id.* ¶ 3.

7. Both Defendant Baldwin and Ms. Gutierrez oppose the State’s requested relief. *See generally* Def.’s Resp.; Gutierrez Br.
8. In addition to Ms. Gutierrez’s appeal referenced above, Ms. Gutierrez currently faces a felony charge in *State v. Gutierrez*, cause no. D-101-CR-2023-00418. Further, civil litigation was recently initiated against Ms. Gutierrez in this judicial district. *See, e.g.*, Compl., filed June 5, 2024, in cause no. D-101-CV-2024-01373; *see generally* Rule 11-201 NMRA (authorizing court to take judicial notice of adjudicative facts); *State v. Turner*, 1970-NMCA-054, ¶ 25, 81 N.M. 571 (“We take judicial notice of the records on file in this court.”).

ANALYSIS AND RULING

9. The Court denies the State’s Motion for Use Immunity on the basis that the State fails to satisfy the elements of Rule 5-116 NMRA.
10. Application of Rule 5-116 NMRA. “Under a grant of use immunity, the State promises to refrain from using a witness’s testimony, and any evidence derived from that testimony, in any future prosecution of the witness.” *State v. Ortega*, 2014-NMSC-017, ¶ 8, 327 P.3d

1076. The decision to grant a witness use immunity is within the discretion of the trial court. *Id.* ¶ 7. “With use immunity, both the prosecution and the witness are left in essentially the same position as if the witness had retained his Fifth Amendment privilege and never testified. The witness is not exposed to criminal liability for testimony given, and the prosecution loses little with respect to its ability to prosecute.” *State v. Belanger*, 2009-NMSC-025, ¶ 12, 146 N.M. 357.

11. With respect to a witness claiming a Fifth Amendment privilege, and assuming the witness is otherwise cooperative, use immunity makes an otherwise unavailable witness under Rule 11-804(A)(1) NMRA available. *See* Rule 11-804(A) NMRA (“Unavailability as a witness’ includes situations in which the declarant (1) is exempted from testifying about the subject matter of the declarant’s statement because the court rules that a privilege applies, . . .”). Further, an immunized, cooperative witness generally ensures that a defendant is afforded the opportunity to confront and cross-examine said witness. *Cf. State v. Zamarripa*, 2009-NMSC-001, ¶ 45, 199 P.3d 846 (“The narrow scope of the immunity granted was problematic in that it did not allow for substantive questioning or full cross-examination of Baca. Rather, any opportunity that Defendant may have had to cross-examine Baca was lost per the terms of the order, because the immunity granted did not extend as far as would have allowed Baca to be fully cross-examined on his statement. Thus, from the time the very limited immunity was conferred, full cross-examination of Baca—such that would have satisfied *Crawford*—was not on the table.”).

12. Upon application by a party, or on the court’s own motion, the Court may grant use immunity pursuant to Rule 5-116 NMRA if the Court “finds the following: (1) the testimony . . . may be necessary to the public interest; and (2) the person has refused or is

likely to refuse to testify . . . on the basis of the person’s privilege against self-incrimination.” Rule 5-116(B).

13. When a defense witness seeks use immunity over the prosecution’s objection, a balancing test applies. *See Belanger*, 2009-NMSC-025, ¶ 38 (“Before granting use immunity to a defense witness over the opposition of the prosecution, district courts should perform a balancing test which places the initial burden on the accused. The defendant must show that the proffered testimony is admissible, relevant and material to the defense and that without it, his or her ability to fairly present a defense will suffer to a significant degree. If the defendant meets this initial burden, the district court must then balance the defendant’s need for the testimony against the government’s interest in opposing immunity.”). Nonetheless, the Court does not find this test applicable given the stances of the parties and nonparty Ms. Gutierrez.

14. Applying Rule 5-116, the Court denies the State’s Motion for Use Immunity. Specifically, the Court finds that the State has failed to establish that use immunity for Ms. Gutierrez “may be necessary to the public interest.” Rule 5-116(B)(1). The Court is unpersuaded that Ms. Gutierrez’s testimony would offer evidence materially beyond that already available to the State, or that the testimony is somehow critical to the State’s case against Defendant Baldwin. *See Mot. for Use Immunity* ¶ 6 (“Ms. Gutierrez possesses . . . information that is inculpatory and would aid the State in its prosecution of Mr. Baldwin.” (emphasis added)).

15. Further, it is undisputed that Ms. Gutierrez opposes testifying at the upcoming trial. *See Gutierrez Br.* In addition, the State makes no proffer that Ms. Gutierrez would cooperate with the State if given use immunity. Thus, even if the Court were to grant use immunity,

Ms. Gutierrez would likely remain unavailable as a witness pursuant to Rule 11-804(A)(2). *See* Rule 11-804(A) (“‘Unavailability as a witness’ includes situations in which the declarant . . . (2) refuses to testify about the subject matter despite a court order to do so, . . .”). Thus, the Court views a grant of use immunity as likely ineffective in this circumstance.


16. Therefore, the Court concludes that a grant of use immunity is unwarranted and not necessary to the public interest.

17. Untimeliness of Filing. Defendant Baldwin argues that the “State’s late-filed motion for use immunity to secure live testimony from Hannah Gutierrez-Reed should be denied” primarily on grounds of untimeliness and prejudice. Def.’s Resp. 1-4. Because the Court denies the State’s Motion for Use Immunity on its merits, the Court does not address Defendant Baldwin’s argument that the motion is untimely or prejudicial. *Cf. State v. Lewis*, 2018-NMCA-019, ¶ 17, 413 P.3d 484 (discussing trial court’s consideration of untimely motion on its merits).

CONCLUSION

IT IS THEREFORE ORDERED that the State’s Amended Opposed Expedited Motion for Use Immunity for Hannah Gutierrez is hereby DENIED.

IT IS HEREBY ORDERED.



MARY MARLOWE SOMMER
DISTRICT COURT JUDGE
DIVISION VIII

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date of acceptance for e-filing a true and correct copy of the foregoing was e-served on counsel registered for e-service in this matter as listed below.

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