

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

STATE OF NEW MEXICO,

Plaintiff,

v.

D-101-CR-2024-00013

ALEXANDER BALDWIN,

Defendant.

STATE'S OPPOSED MOTION FOR USE IMMUNITY FOR
HANNAH GUTIERREZ

COMES NOW, the State of New Mexico, by and through Special Prosecutors, Kari T. Morrissey and Erlinda O. Johnson, who respectfully request this Court grant use immunity pursuant to NMRA 5-116 to witness Hannah Gutierrez and as grounds state as follows:

1. Ms. Gutierrez is listed on Defendant Baldwin's witness list (and on the State's witness list by proxy as the State has reserved the right to call all witnesses named by the defendant). Ms. Gutierrez submitted to a pretrial interview on May 14, 2024, wherein she asserted her Fifth Amendment privilege to all substantive questions.
2. Presumably 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. If Ms. Gutierrez is not granted use immunity the defendant will likely attempt to have her previous statements admitted as exceptions to the rule against hearsay as statements against interest pursuant to 11-804(B)(3) NMRA. This requires the defendant to demonstrate that Ms. Gutierrez is unavailable due to the assertion of her Fifth Amendment privilege pursuant to 11-804(A)(1) NMRA.

3. If Ms. Gutierrez were not compelled to testify by the Court and her statements were to be admitted under 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.
4. Upon information and belief, should the Court grant use immunity to Ms. Gutierrez and order her to testify truthfully in the trial of Defendant Baldwin, Ms. Gutierrez would testify that Mr. Baldwin was inattentive during the firearms training session she conducted with him, Mr. Baldwin indicated an apparent willingness to participate in additional training the following day with his holster but failed to do so, Ms. Gutierrez would testify to what her firearms training with Mr. Baldwin consisted of, she would testify that Mr. Baldwin was a producer and had the freedom to do whatever he wanted and the other producers “had to reel him in all the time”, Mr. Baldwin would become upset and have emotional fits, Mr. Baldwin was not supposed to be cocking the gun or pulling the trigger during the rehearsal when the gun went off, Mr. Baldwin would frequently rush her when she was loading/unloading weapons and that there were two other actors on the set of Rust that regularly conducted their own safety checks of their guns. Ms. Gutierrez would also likely testify that actors are not supposed to point their guns at crew members and that she offered Mr. Baldwin an inert gun to rehearse with just before the shooting of Ms. Hutchins but either Baldwin and/or Halls demanded the real gun be provided.
5. NMRA 5-116 states that the Court may grant the State’s motion for use immunity if the Court finds the testimony may be necessary to the public interest and that Ms. Gutierrez

is likely to refuse to testify on the basis of her privilege against self-incrimination.

NMRA 5-116(B)(1) and (2).

6. Ms. Gutierrez possesses information that is exculpatory to Mr. Baldwin and necessary to his defense and she also possesses information that is inculpatory and would aid the State in its prosecution of Mr. Baldwin. The 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.
7. That State is not offering Ms. Gutierrez a benefit for her testimony against Mr. Baldwin. The grant of use immunity would only protect Ms. Gutierrez from her statements during the Baldwin trial being used against her should her appeal be successful, and the State would be unable to use any of her statements to pursue other future charges against Ms. Gutierrez based on her testimony.
8. “[U]nder a grant of use immunity, the prosecution promises only to refrain from using the testimony in any future prosecution, as well as any evidence derived from the protected testimony. Under use immunity, the prosecution may still proceed with charges against the witness so long as it does not use or rely on the witness's testimony or its fruits.”
State v. Belanger, 146 N.M. 357, 361, 2009-NMSC-025, 11, 210 P.3d 783, 787.
Moreover, pursuant to NMRA 11-413 the State would be free to prosecute Ms. Gutierrez for perjury should she perjure herself during her testimony in the Baldwin trial.
9. Defense counsel, Sara Clark, opposes this motion.
10. The defendant’s opposition to this motion is a clear indicator that the defendant intends that only exculpatory testimony from Ms. Gutierrez be presented to the jury and that the

exculpatory testimony take place in a vacuum. The jury should hear all relevant testimony from Ms. Gutierrez.

WHEREFORE, for the above stated reasons, the State respectfully requests this Court grant use immunity to Ms. Gutierrez and order her to testify in the trial of Alec Baldwin.

Respectfully Submitted,

/s/ Kari T. Morrissey

Kari T. Morrissey

Erlinda O. Johnson

Special Prosecutors

First Judicial District

1303 Rio Grande NW, Suite 5

Albuquerque, New Mexico 87104

(505) 361-2138

ktm@morrisseylewis.com

I hereby certify that a true and accurate copy of the foregoing was provided to counsel for the defendant via e-mail this 3rd day of June 2024.

/s/ Kari T. Morrissey

Kari T. Morrissey