

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

STATE OF NEW MEXICO,

Plaintiff,

v.

D-101-CR-2023-00040

HANNAH GUTIERREZ,

Defendant.

**STATE OF NEW MEXICO'S NOTICE OF INTENT TO
INTRODUCE EVIDENCE CONCERNING THE DEFENDANT'S
CRIMES, WRONGS, AND/OR OTHER ACTS**

COMES NOW, the State of New Mexico, by and through Special Prosecutor, Kari T. Morrissey, and hereby notifies the Court and the Defendant that it intends to introduce evidence of "other acts," as identified below, in its case-in-chief.

FACTS

Ms. Gutierrez is charged with involuntary manslaughter for the fatal shooting of Halyna Hutchins on October 21, 2021. Ms. Gutierrez was employed as an armorer on the set of the movie *Rust*. In her capacity as armorer, Ms. Gutierrez was responsible for guns, ammunition and gun safety on the set. The only type of ammunition that should have been present on the set was blank and dummy ammunition. Ms. Gutierrez inadvertently loaded a fully functioning .45 caliber single action army revolver with dummy rounds and at least one live round and provided the gun to Alec Baldwin to use for a scene in the movie. Predictably, Mr. Baldwin manipulated the gun, and the gun went off unexpectedly killing Ms. Hutchins.

The investigation conducted by the special prosecutor has revealed photographic evidence depicting the presence of live rounds on the set of *Rust* on October 10, 13, 15, 17 and 21, 2021. There were six live rounds ultimately located on the movie set including the live

round that killed Ms. Hutchins. The live rounds were located in the gun being manipulated by Alec Baldwin, in a box of supposed dummy ammunition brought on the set by Ms. Gutierrez, in the gun belt worn by the character in the movie played by actor Jensen Ackles and in the bandolier worn by Ms. Baldwin. There were two live rounds located on top of the cart used by Ms. Gutierrez on the set, based on witness testimony the two live rounds on the cart were removed either from Baldwin's gun or from the box of ammunition brought on set by Ms. Gutierrez.

Defense counsel have provided numerous public statements that Ms. Gutierrez was the victim of sabotage by a variety of other crew members. They claim that disgruntled crew members (and Seth Kenney) planted live rounds on the set of *Rust*. This is a claim there is absolutely no evidentiary support for. The defense intends to call Thell Reed, Frank Koucky and P.J. Pesce to testify that Ms. Gutierrez acted appropriately and safely when handling firearms on set and was appropriately trained in the industry standards for armorers working on film sets.

FACTS OF "OTHER ACTS"

Drug and Alcohol Use

There is evidence in the form of text messages between Ms. Gutierrez and two other people that detail discussions related to drug and alcohol use during the time Ms. Gutierrez was working on the movie set. For a transcription of the text messages please see the State's Response to the Defendant's Motion to Sever filed with this Court on January 31, 2024. There is also testimony from a hotel employee that befriended Ms. Gutierrez that she was in possession of ammunition for the set of the movie while also high on marijuana. The state intends to present all text messages sent or received by Ms. Gutierrez that demonstrate her use of alcohol,

marijuana and cocaine during the time that Ms. Gutierrez was in New Mexico working on the set of *Rust* as well as testimony from the hotel employee.

As stated in previous motions, this evidence is directly related to negligence and recklessness by Ms. Gutierrez. There is evidence that the live rounds were brought on set by Ms. Gutierrez in a box of supposed dummy rounds that she procured for her work on the set of *Rust*. One of Ms. Gutierrez' primary job duties as armorer is to ensure that only dummy rounds and blank rounds are present on set and that all guns and ammunition are handled safely. Ms. Gutierrez' negligent conduct cannot be viewed in a vacuum. There were a series of negligent acts or omissions that culminated in the death of Ms. Hutchins. Ms. Gutierrez engaged in negligent acts every day she worked on the set that she failed to discern between live rounds and dummy rounds. This series of acts culminated in her final act of negligence when she failed to thoroughly check the rounds she placed in the firearm being handled by Alec Baldwin on October 21, 2021. A jury can reasonably conclude that a person who is under the influence of drugs and alcohol on a daily basis may be less likely to properly perform their job functions and discern between dummy rounds and live rounds which are visibly similar. The fact that there is evidence that the live rounds were on set as early as October 10, 2021 and before (given that Ms. Gutierrez brought the box of supposed dummies that contained the live rounds on the set when she first arrived in New Mexico to begin filming).

There is a direct correlation between gun safety and drug and alcohol use. The crime of negligent use of a firearm in New Mexico, which is the predicate offense to the involuntary manslaughter charge in the instant case, includes the handling of weapons while under the influence of intoxicants. Moreover, federal law prohibits the possession of firearms by

individuals addicted to intoxicating substances. It is not a secret that using drugs and alcohol can impair someone's ability to perform simple tasks.

Guns and Ammunition Unattended During Filming

There is evidence from numerous members of the crew working on the set of *Rust* that Ms. Gutierrez would frequently leave guns and ammunition unattended on her prop cart or elsewhere, or leave actors unattended in possession of real firearms and prop guns creating safety concerns for crew members. Leaving guns and ammunition unattended is contrary to industry standards for armorers on movie sets. One of Ms. Gutierrez' defenses is that the live rounds appeared on the set of *Rust* due to sabotage. Ms. Gutierrez' attorneys have opined that the sabotage was related to the camera crew who walked off the set and quit they day before the fatal shooting and/or that Seth Kenney and/or Sarah Zachry engaged in sabotage to get Ms. Gutierrez fired.

All instances of Ms. Gutierrez leaving guns and ammunition unattended is relevant to her previously stated defenses which were aired publicly by her attorneys and her stepfather on national news programs. Because Ms. Gutierrez frequently left guns and ammunition unattended on the set (meaning outside the control of Ms. Gutierrez or Ms. Zachry) contrary to industry standards for an armorer on a movie set, Ms. Gutierrez' own negligence created the opportunity for sabotage, if in fact there was sabotage. It is worth noting that there is no evidence of sabotage other than pure speculation and self-serving statements on the part of Ms. Gutierrez and her counsel.

This evidence is also admissible to show opportunity. While Ms. Gutierrez is not charged with intentional homicide, she is charged with homicide based on negligence. There was not one negligent act that led to this tragedy. The tragedy occurred due to a series of

negligent acts given that the live rounds were on set well before October 21, 2021. Her ongoing negligent acts created numerous opportunities for live rounds to go undetected on the set of *Rust* and create an opportunity for the very sabotage she intends to claim resulted in the live rounds being present on the set.

This testimony is also in direct contradiction of the statements anticipated by Thell Reed, P.J. Pesce and Frank Koucky with regard to Ms. Gutierrez' competence on set and familiarity with industry standards for gun safety on movie sets.

Prop Truck Access

On or about October 23, 2021 Ms. Gutierrez asked for access to the locked prop truck to remove some of her belongings. The prop truck contained numerous pieces of evidence relevant to this case and was not searched by police until October 27, 2021. Ms. Gutierrez' defense attorneys will argue that between October 21, 2021 and October 27, 2021 (the day the search warrant was executed on the prop truck) that the prop truck was unattended and anyone could have gained access to it and planted or tampered with evidence. However, there is evidence from the testimony of Row Walters, Unit Production Manager, that during the relevant time the truck was secured with a padlock and the only person who had access to it (other than Ms. Walters and the operator of the truck) was Ms. Gutierrez on October 23, 2021 when she removed gun belts and likely dummy rounds from the truck without first notifying the investigating officers that she intended to remove items that were physically located on the set.

Search for Live Ammunition

There will be evidence and testimony that during the months prior to October 21, 2021 Ms. Gutierrez was actively searching for .45 caliber live ammunition to purchase and was in fact able to purchase .45 caliber live ammunition. This is relevant under 11-404(B) because it goes to

opportunity and lack of accident (or in this case sabotage). The evidence that Ms. Gutierrez was actively searching for and obtained live ammunition is directly contradictory to the sabotage theory that Ms. Gutierrez intends to present and has disseminated publicly through the numerous media appearances by her attorneys and her stepfather that suggests that other disgruntled crew member planted the live ammunition on set.

If Ms. Gutierrez was charged with an intentional killing and there was evidence that she was searching for, and ultimately purchased, the exact kind of ammunition used in the killing there is no question it would be admissible. The fact that Ms. Gutierrez is charged with an unintentional killing should not change the analysis.

Safety Checks of Guns on Set

There will be testimony that Ms. Gutierrez routinely failed to conduct the proper safety checks of the firearms and ammunition used on set. Industry standards dictate that firearms and ammunition are to be checked before being brought on the set to ensure that all rounds are inert or blank rounds. Armorers are required to load the weapon with the blanks or dummy rounds in the presence of the cast and crew. The armorer is tasked with demonstrating to the cast and crew that the ammunition used in any given scene is either dummy or blank ammunition. The armorer performs this safety check by showing the rounds of ammunition to the cast and crew and shaking any dummy rounds that contain BBs in the presence of the cast and crew before the shooting of the scene. Given that there is evidence that the live rounds were on set from October 10, 2021 until the day of the shooting this evidence goes to knowledge and absence of mistake. Ms. Gutierrez knew that by not conducting the proper safety checks of the guns and ammunition she was creating an opportunity for a live round to be inadvertently placed in a real firearm used

as a movie prop and failed to conduct the safety checks the entire time that live rounds were present on the movie set.

This testimony is also in direct contradiction of the statements anticipated by Thell Reed, P.J. Pesce and Frank Koucky with regard to Ms. Gutierrez' competence on set and familiarity with industry standards for gun safety on movie sets.

Unsafe Handling of Weapons

There will be evidence and testimony that Ms. Gutierrez generally permitted actors to handle guns unsafely and point them at people. The well-known industry standards for gun safety on movie sets is that guns are not to be pointed directly at people and Ms. Gutierrez is responsible for gun safety on set. Relevant safety bulletins disseminated by the Screen Actor's Guild and other professional organizations clearly indicate that guns are not to be pointed at people on movie sets. One of Ms. Gutierrez' defense is that Mr. Baldwin engaged in unsafe behavior when he pointed the gun at Halyna Hutchins and manipulated it. As the court is aware, Ms. Gutierrez intends to request proximately cause jury instructions to advance her defense (UJI 14-251 and 14-252). Ms. Gutierrez' defense is that Mr. Baldwin should not have pointed the gun at Ms. Hutchins and manipulated the hammer and/or trigger for the particular scene during which the fatal shooting occurred. As stated publicly Ms. Gutierrez intends to claim that she would have intervened if she had been present in the church at the time of the shooting. The evidence from videos and the testimony of crew members is that Ms. Gutierrez routinely permitted guns to be used by actors in an unsafe manner and pointed at cast and crew. Therefore, any evidence or testimony that Ms. Gutierrez would have intervened with Mr. Baldwin on October 21, 2021 and corrected him is self-serving and not supported by the evidence. This is relevant to absence of

mistake and lack of accident. It is also relevant to her ongoing negligence related to firearms while working on the set.

This testimony is also in direct contradiction of the statements anticipated by Thell Reed, P.J. Pesce and Frank Koucky with regard to Ms. Gutierrez' competence on set and familiarity with industry standards for gun safety on movie sets.

Jammed Lever Action Rifle

While searching the prop truck on October 27, 2021, law enforcement officers located a lever action rifle that was jammed because the wrong caliber of ammunition was placed in the gun. A specialist from the sheriff's department had to be called in to render the rifle safe to handle.

Placing the wrong caliber of ammunition into any fully functioning gun on a movie set is contrary to industry safety standards and is in direct contradiction to the anticipated testimony of Thell Reed, P.J. Pesce and Frank Koucky with regard to Ms. Gutierrez' competence on set and familiarity with industry standards for gun safety on movie sets.

ADDITIONAL ARGUMENT

Pursuant to Rule 11-404(B), evidence of other bad acts may be admissible for proving another purpose [other than character or a character trait], such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

In *Otto*, this Court held that the ***list of permissible reasons to admit other-act evidence is not exhaustive***, providing “evidence of other wrongs may be admissible on alternative relevant bases so long as it is not admitted to prove conformity with character.” 2007–NMSC–012, ¶ 10, 141 N.M. 443, 446, 157 P.3d 8, 11; see also *State v. Jones*, 1995–NMCA–073, ¶ 8, 120 N.M. 185, 188, 899 P.2d 1139, 1142 (“New Mexico allows use of other bad acts for many reasons, including those not specifically listed in [Rule] 11–404(B).”). ***Importantly, then, “Rule 11–404(B) is a rule of inclusion, not exclusion, providing for the admission of all evidence of other acts that [are] relevant to an issue in trial, other than the general propensity to commit the crime charged.”*** *State v.*

Phillips, 2000–NMCA–028, ¶ 21, 128 N.M. 777, 783, 999 P.2d 421, 427, cert. denied, 128 N.M. 689, 997 P.2d 821 (internal quotation marks and citation omitted).

State v. Bailey, 2017-NMSC-001¶14, 386 P.3d 1007, 1011 (emphasis added).

For these reasons, the State hereby gives notice of its intent to introduce the foregoing evidence of other crimes, wrongs, and/or prior bad acts in its case against the defendant.

Respectfully submitted,

/s/ Kari T. Morrissey
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of February 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