

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

STATE OF NEW MEXICO,

Plaintiff,

v.

Cause No. CR 101-CR-2023-00040

HANNAH GUTIERREZ,

Defendant.

STATE'S RESPONSE TO DEFENDANT'S MOTION TO SEVER AND  
EXCLUDE MENTION OF ALLEGED OTHER BAD ACTS

COMES NOW, the State of New Mexico, through Special Prosecutor, Kari T. Morrissey, who respectfully submits the following in response to the above-entitled motion:

**Correction of the Court Record**

The defendant's name is Hannah Gutierrez. The defendant's name is not Hannah Gutierrez-Reed or Hannah Gutierrez Reed. The court record should reflect the legal name of the defendant. Upon information and belief Ms. Gutierrez began using the last name *Reed* when she first began her career in film in approximately 2021 in order to gain recognition by purporting to share the same last name as her stepfather, Thell Reed.

**Factual Background**

On October 21, 2021, Halyna Hutchins was shot and killed by a real, fully functioning firearm that was loaded by Hannah Gutierrez. Ms. Gutierrez loaded a live round into the gun and handed the gun off to Dave Halls or Alec Baldwin depending on which version of events the reader chooses to believe. The initial 911 call immediately after the shooting was placed at 1:48 p.m. After police arrived on scene, Ms. Gutierrez was placed in the back of a police unit because she appeared to be having a panic attack (cocaine use can cause anxiety and panic attacks). Ms.

Gutierrez waited in one patrol unit or another for approximately two hours before she was interviewed by detectives at the sheriff's department at 4:15 p.m. The effects of cocaine generally last an hour or less so there is no reason to believe Ms. Gutierrez would have shown clear signs of drug use at the time of the interview. There is ample evidence through police video recordings that Ms. Gutierrez was extremely nervous and anxious while having contact with the police. Presumably the police attributed this behavior to the excitement and stress of the situation because they had no idea that she was using or possessing cocaine during the weeks the movie was being filmed.

Ms. Gutierrez was interviewed by detectives and was ultimately released. Shortly after she arrived back at her hotel, Rebecca Smith went to keep her company due to the stress of the situation. Ms. Smith and Ms. Gutierrez were not well acquainted but knew each other peripherally from their work on the movie set. Ms. Smith was asked by a mutual friend to keep Ms. Gutierrez company because she was distraught. Ms. Smith kept Ms. Gutierrez company for a short while and then decided to leave Ms. Gutierrez's hotel room. When Ms. Smith was leaving the room, Ms. Gutierrez put a baggie of white powdery substance in Ms. Smith's hand. After leaving Ms. Gutierrez's room, Ms. Smith looked at what Ms. Gutierrez placed in her hand and Ms. Smith recognized it as likely being cocaine due to its appearance and packaging (a white powdery substance packaged in a small plastic baggie). Ms. Smith threw the suspected narcotics away in a trash can in the hallway outside Ms. Gutierrez's hotel room.

Nearly two years later, undersigned counsel was reviewing the text messages in the limited report generated by RCFL from Ms. Gutierrez' cellular phone. The report consisted of approximately 1100 pages of text messages. When reviewing the messages, counsel noticed an

interesting pattern – Mr. Gutierrez was texting a person named “Becca” asking to get her “stuff” back and “Becca” was mostly nonresponsive. The text messages are as follows:

10/23/21 12:28 p.m. Ms. Gutierrez to Becca:

Hey, I might be coming to Albuquerque tonight and was wondering if I can get that stuff.

10/23/21 5:09 p.m. Ms. Gutierrez to Becca:

Becca call me when you get a chance.

10/23/21 6:20 p.m. Ms. Gutierrez to mutual friend: Becca hasn't texted me back at all and I'm trying to get my things from her tomorrow.

10/24/21 11:31 a.m. Ms. Gutierrez to Becca:

Becca?

11/7/21 2:52 p.m. Ms. Gutierrez to Becca:

Hey coming to Albuquerque tomorrow

Gonna be there for a week or so

11/10/21 2:39 p.m. Ms. Gutierrez to Becca:

...I wanted to see you

11/13/21 7:02 p.m. Ms. Gutierrez to mutual friend:

Could Becca maybe drop my things to ya'll? Since I haven't been able to reach her?

11/22/21 5:53 p.m. Ms. Gutierrez to Becca:

Hey Becca, mind if my brother in law picks up my things from you after thanksgiving?

He lives in Albuquerque.

After reviewing the above transcribed texts undersigned counsel cross-referenced the phone number for “Becca” with the master list of phone numbers for the cast and crew working on the set of *Rust* and discovered that Becca was actually Rebecca Smith who was also a crew member working on the set. Counsel called Ms. Smith and asked what Ms. Gutierrez was trying to get back for the four weeks that she texted her and Ms. Smith responded, “A bag of cocaine.” Shortly thereafter, Ms. Smith submitted to a formal audio recorded interview where she

explained how Ms. Gutierrez gave her a bag of cocaine after her return from her interview at the police department and then proceeded to text her for the next month in an attempt to get it back. Ms. Smith recognized the white powdery substance as cocaine because as a younger person she used cocaine. Ms. Smith described the packaging that the cocaine was in (one small Ziplock style baggie inside of another larger Ziplock style baggie). She further stated that the packaging was consistent with the packaging of cocaine in her experience.

As corroborative of Ms. Smith's statements and observations, undersigned counsel offers the following text messages from Ms. Gutierrez' cell phone extraction report detailing the use of marijuana and cocaine and exposing her recklessness concerning substance use:

Sender: 9/22/21 (one week prior to Ms. Gutierrez arrival in NM to begin work on Rust).  
F6 Do you want me to get us any coke? Also, when will you be down here?

Hannah Gutierrez: Already got some. Idk yet, maybe Friday since you're off (referring to cocaine).

10/16/21 (During the filming of Rust)

Transportation crew member to Hannah Gutierrez: If I don't stay here tonight we should meet up for breakfast tomorrow before coming in to work also (wake and bake session) lol if ur down.... (wake and bake is a common reference to using marijuana first thing in the morning, and in the defendant's case, before going to work on the set).

10/17/21

Hannah Gutierrez responds and apologizes for not responding sooner but doesn't address the wake and bake invite.

10/17/21 (During the filming of Rust)

Hannah Gutierrez to transportation crew member: I'm pretty warm out here. Oh shit dood. Well I got a spare pullout bed if you need.

Transportation crew member to Hannah Gutierrez: That's good at least..and ok that's awesome thanks for the offer I'd b down but I'd hate to impose and I think You will be out of here before me.. But we can talk and see before u leave.

Hannah Gutierrez to transportation crew member: "Right on, I got something that can wake you up too if not". (referring to cocaine).

Transportation crew member to Hannah Gutierrez: Damn well it's b nice to have a place to rest a few hours before driving but now you have me intrigued lol

Hannah Gutierrez to transportation crew member: lol either way

Transportation crew member to Hannah Gutierrez: Well if it's cool with u I'm down to crash there. If ur awake when I get out also lol

Hannah Gutierrez to transportation crew member: I'm up, I'll roll one. I always gotta stay up for a bit when I get back anyways. (referring to rolling a marijuana cigarette).

10/18 (During the filming of Rust)

Transportation crew member to Hannah Gutierrez: Thanks again. Ur awesome nd gorgeos by the way lol we gotta chill again this week if you wanna I'll take some drinks bud and maybe some white from Vegas so you can try it if not no worries I'll see u at work Wednesday. (referring to alcohol, marijuana and cocaine).

Hannah Gutierrez to transportation crew member: Awe thanks, that means a lot considering I look like a potato most of the time haha. You pretty cute too, even tho you snore yeah I'm down, I'll letcha know

10/20/21 (During the filming of Rust - the night before Halyna Hutchins' death)

Hotel Employee to Hannah Gutierrez: Hey if you do have Oscar check the TV, make sure your weed is out of sight and the room doesn't smell like weed. He's cool but he ain't that cool.

Hannah Gutierrez to Hotel Employee: Lmao I know that, wasn't gonna have him check it out today.

10/20 (During the filming of Rust -the night before Halyna Hutchins' death).

Transportation crew member to Hannah Gutierrez: What's up what's the word for the night wanna take a couple dabs or something I'ma get some McDonald's nd maybe hit up a store (referring to concentrated marijuana).

Hannah Gutierrez to transportation crew member: Not sure yet, where you staying?

Transportation crew member to Hannah Gutierrez: The inn as well let me know if u get bored I'll b chilling playing Mario on the switch and dabbing after I eat lol I didn't get to bring up any snow (symbol) but when I do we can match (referring to marijuana and cocaine).

Hannah Gutierrez to transportation crew member: Lol I don't need that tonight anyways. Right on, **I might go smoke in the jacuzzi soon**, but maybe not I'm so pooped (referring to marijuana).

Hannah Gutierrez to transportation crew member: Headed down to get high out back:b (referring to marijuana).

Transportation crew member to Hannah Gutierrez: Headed to the room now

Transportation crew member to Hannah Gutierrez: Time to eat now howd the blaze sess go (referring to a session of smoking marijuana).

Hannah Gutierrez to transportation crew member: I'm still smoking (referring to marijuana).

Transportation crew member to Hannah Gutierrez: U high enough or want a couple dabs (referring to concentrated marijuana).

Hannah Gutierrez to transportation crew member: I'm in bed, sleep tight tho

Mr. Bowles complains in his motion that Ms. Gutierrez alleged substance use and abuse during the filming of *Rust* is not supported by the evidence. On October 25, 2021 Sarah Zachry had the following text exchange with Seth Kenney:

Sarah Zachry: I told you Hannah was blackout drunk last "weekend," right?

Seth Kenney: Oh god, no.

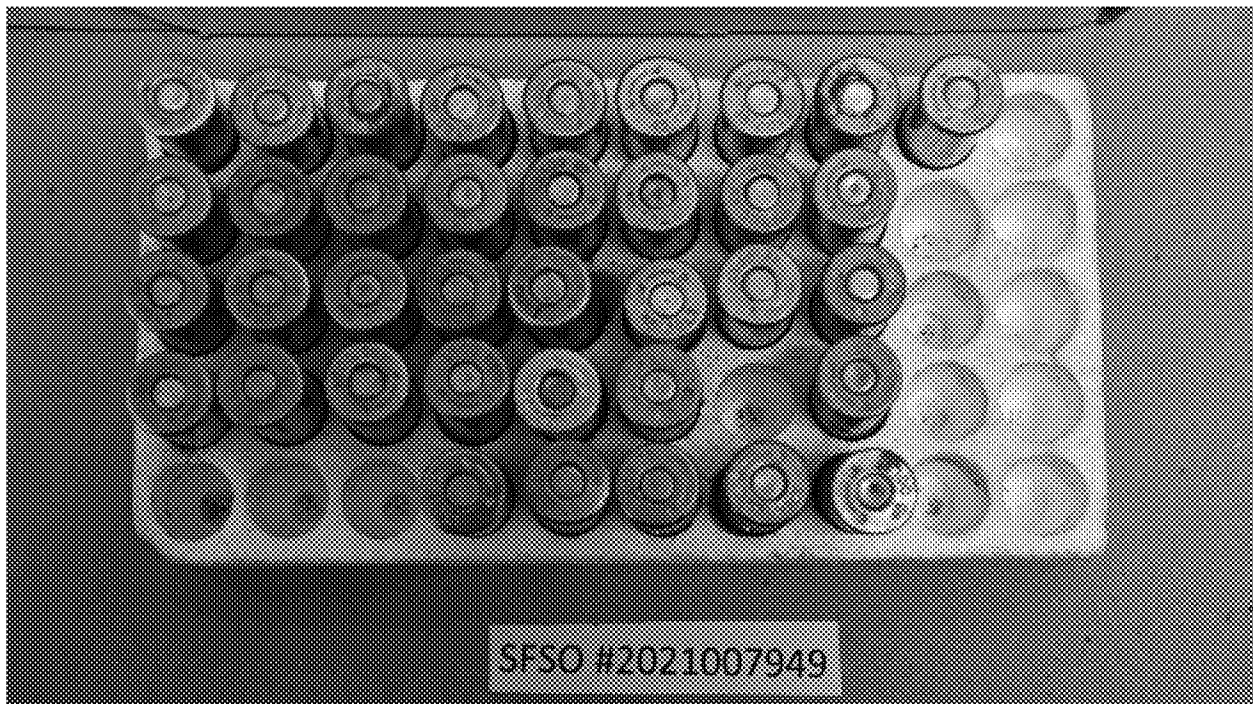
The above exchange was not the first time Ms. Zachry expressed concern about Ms. Gutierrez's abuse of intoxicating substances during the filming of the movie.

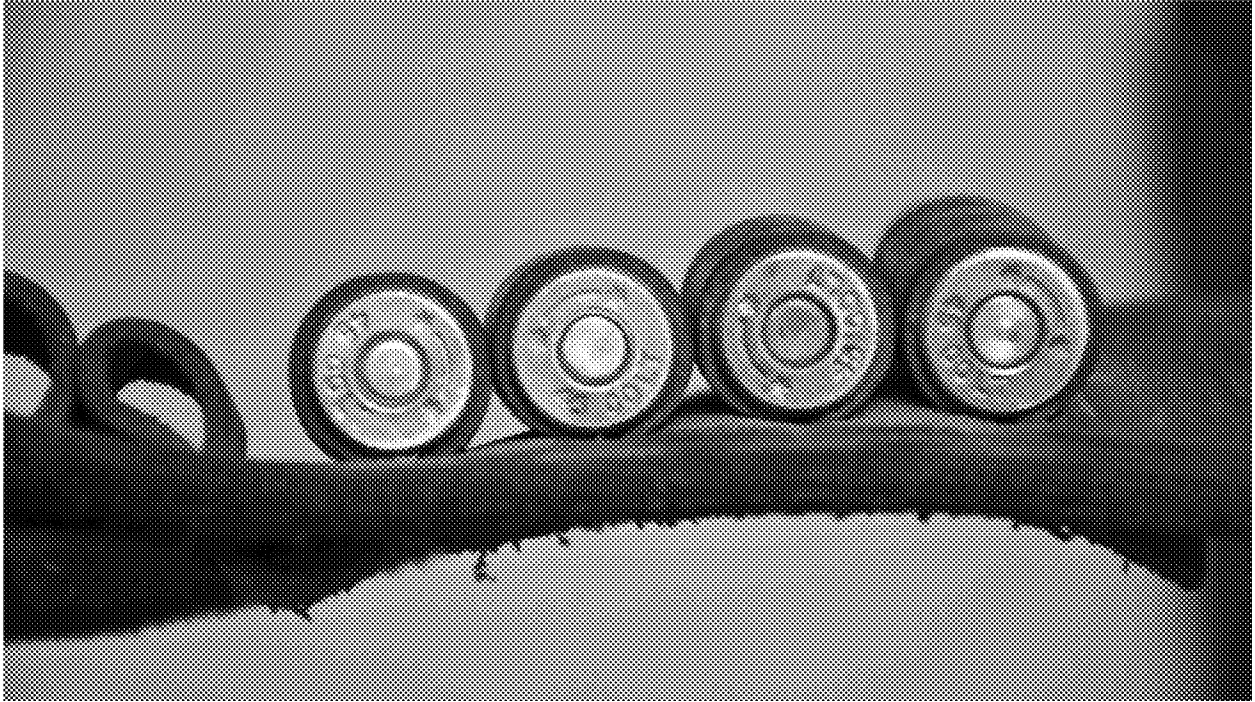
In addition to the defendant's own text message exchanges and statements by Ms. Zachry, there are witnesses that Ms. Gutierrez was high on marijuana in her hotel room in Santa Fe while simultaneously in possession of boxes of ammunition for use on the set of the movie. Finally, in Ms. Gutierrez' interview with detectives on November 9, 2021 (with Mr. Bowles present) Ms. Gutierrez admitted to using marijuana and alcohol in the evenings after she completed work on the set.

Ms. Gutierrez's primary job duty as armorer on the set of *Rust* was to ensure that the guns were loaded with the proper ammunition. This entailed loading the different revolvers with the

proper load size of blank rounds (rounds that expel smoke and make a loud noise but do not shoot a projectile like a real bullet) and dummy rounds (rounds that are designed to look like real bullets but contain no gun powder – they either have a hole in the side of the brass or have bb's in the brass casing so they rattle when shaken). Ms. Gutierrez was unable to distinguish between dummy rounds and live rounds. Based on the extensive evidence from her text messages and other witnesses' observations of her substance abuse during the filming of *Rust* a reasonable juror could conclude that daily use of several mind-altering substances may have contributed to her inability to tell the difference. A jury could reasonably conclude that a person who uses marijuana, alcohol, and cocaine in the evening and begins work at 6:00 am may still be impaired in the morning.

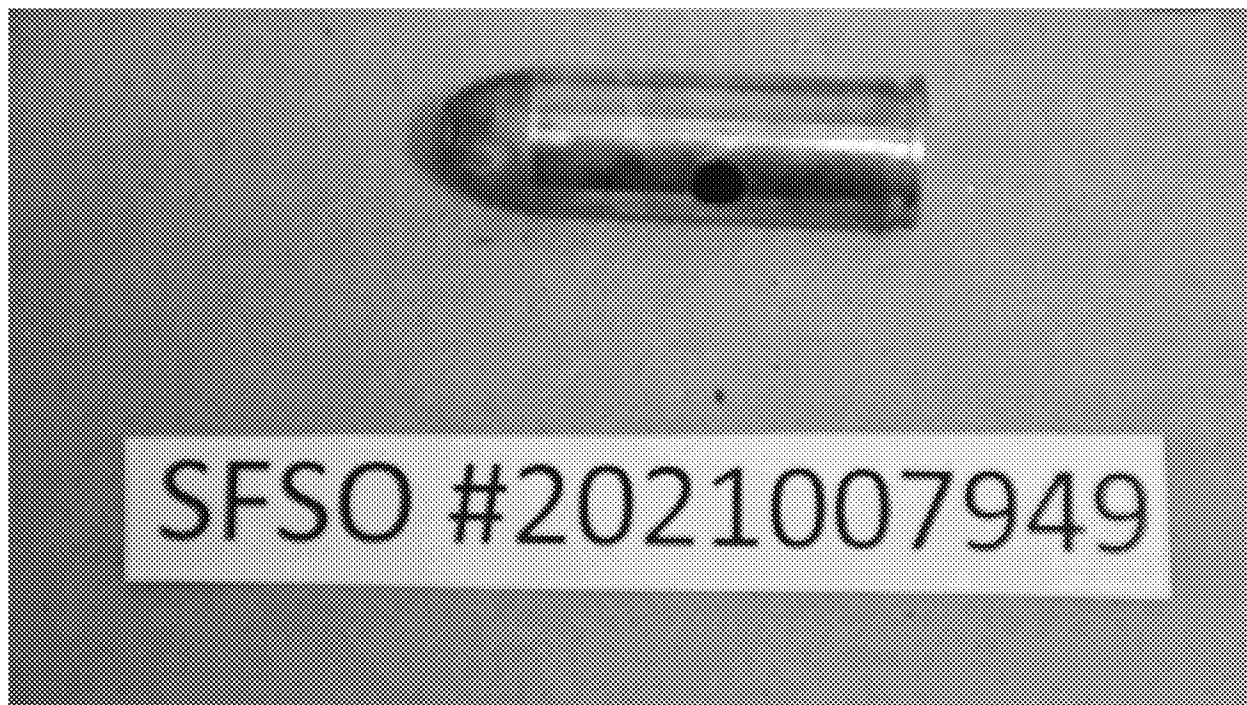
The live rounds were visibly dissimilar to the dummy rounds. Which of these is not like the others?

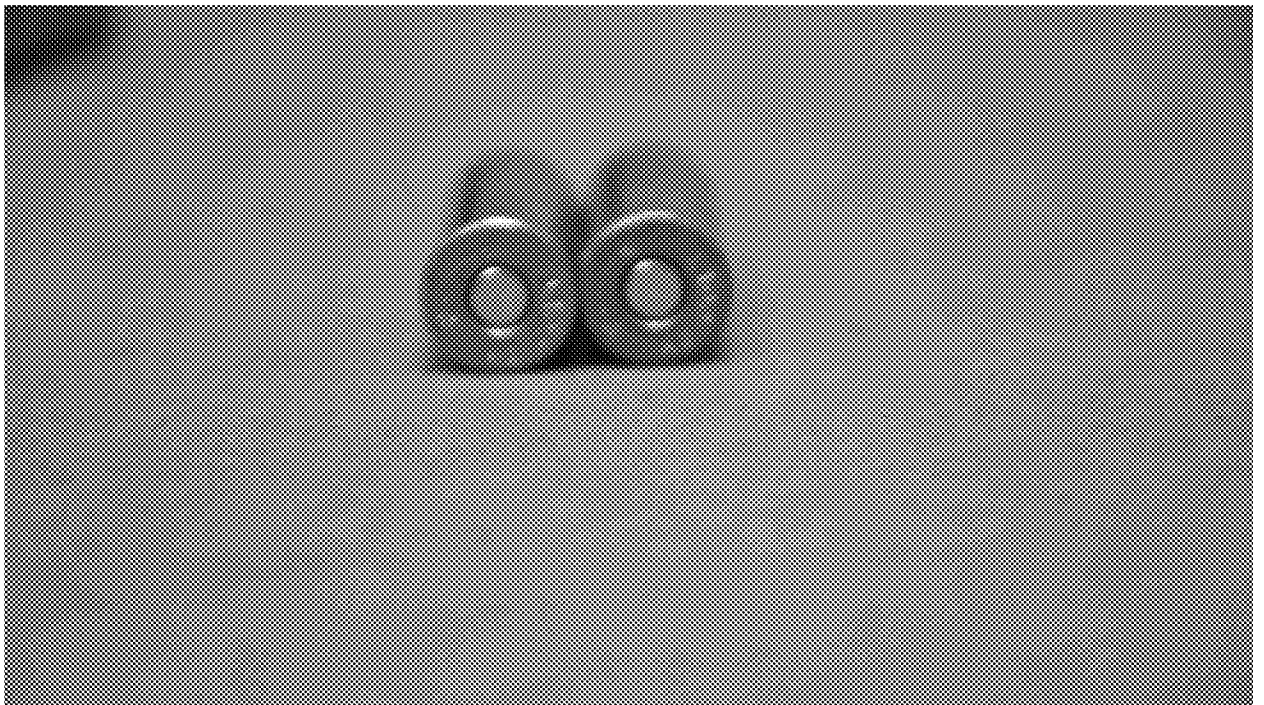






And which of these are not like the others?





Ms. Gutierrez' substance abuse is more than relevant to her inability to tell the difference between dummy rounds and live rounds. The transfer of the baggie of cocaine demonstrates that Ms. Gutierrez was, at a minimum, in possession of cocaine on October 21, 2021. This evidence goes to the heart of her negligent use of a firearm resulting in the death of Ms. Hutchins. The evidence also is material to the alternative count of involuntary manslaughter requiring that she acted without due caution and circumspection. The State concedes that it cannot prove with direct evidence such as a blood test that Ms. Gutierrez may have been impaired (at least slightly) on October 21, 2021, but there is more than enough circumstantial evidence that a jury should be able to hear it and consider it because consistent substance use is relevant to the element of negligence and whether she acted without due caution and circumspection. It is worth noting that there was not just one live round found on set, there were six live rounds found on set in multiple, separate locations and they can be tracked through photographic evidence on October 10, 13, 15, 17, 2021, and of course, October 21, 2021. Not only was Ms. Gutierrez unable to tell the difference between dummy rounds and live rounds on October 21, 2021, but she was unable to tell the difference on previous days of filming as well.

The defendant would like the Court to believe that she handed a small baggie of powdered sugar to Ms. Smith shortly after returning from her interview at the police station. Perhaps even more absurd is the notion that Ms. Gutierrez tried for four weeks to get her baggie of powdered sugar returned and Ms. Smith ignored most of her attempts to return the powdered sugar.

The fact is that Ms. Gutierrez off-loaded a bag of cocaine to an acquaintance in order to prevent law enforcement from catching on that she was using drugs. She handed off the baggie to an acquaintance within a couple of hours of returning from her interview with sheriff's

detectives. If law enforcement had been aware that she was using drugs she could have been charged with Involuntary Manslaughter based on Negligent Use of a Firearm for handling a firearm while impaired.

In short, circumstantial evidence of substance abuse is relevant to whether or not she was negligent in handling the guns on set and determining dummy rounds from live rounds or whether she acted without due caution and circumspection. The tampering charge also goes directly to her consciousness of guilt. Undersigned counsel was able to find no New Mexico case law where a court severed a tampering charge from the underlying offense. Presumably the reason for that is that tampering with evidence generally is relevant to consciousness of guilt.

### **Argument**

There are countless cases in New Mexico that have held that attempts to deceive the police are relevant as consciousness of guilt. “Defendant's conduct at and immediately after the incident is relevant. The conduct of an accused after a crime may circumstantially establish his participation in the crime. People v. Jones, 108 Cal.App.3d 9, 166 Cal.Rptr. 131 (1980); Kimbro v. State, 152 Ga.App. 893, 264 S.E.2d 327 (1980); Young v. State, 176 Ind.App. 32, 373 N.E.2d 1108 (1978); Medellin v. State, 617 S.W.2d 229 (Tex.Cr.App.1981). Just as evidence of flight tends to show one's guilty knowledge, State v. Ramirez, 98 N.M. 268, 648 P.2d 307 (1982), an attempt to deceive the police concerning the identity of defendant's fellow participants may be considered as relevant circumstantial evidence. Evidence of such an attempt tends to show a consciousness of guilt as an accomplice.” State v. Lujan, 103 N.M. 667 at 674 (1985).

“Not only may Defendant's acts before and during the crime provide evidence of intent, evidence of flight or "an attempt to deceive the police" may prove consciousness of guilt. State v.

Martinez, 1999 NMSC 18, PP 29-30, 127 N.M. 207, 979 P.2d 718 (*internal quotation marks and citations omitted*).” State v. Flores, 147 N.M. 542 at 550 (2010).

“Tampering with evidence after the fact constitutes evidence of a consciousness of guilt for the earlier crime. State v. Martinez-Rodriguez, 2001 NMSC 29, P24, 131 N.M. 47, 33 P.3d 267. "The state of mind that is characterized as guilty consciousness or consciousness of guilt is strong evidence that the person is indeed guilty." State v. Robertson, 254 Conn. 739, 760 A.2d 82, 99 (Conn. 2000) (quotation marks and quoted authority omitted) (alteration in original); accord Torres v. State, 794 S.W.2d 596, 598 (Tex. App. 1990) ("A 'consciousness of guilt' is perhaps one of the strongest kinds of evidence of guilt. It is consequently a well-accepted principle that any conduct on the part of a person accused of a crime subsequent to its commission, which indicates a 'consciousness of guilt' may be received as a circumstance tending to prove that he [or she] committed the act with which he [or she] is charged.") (quotation marks and quoted authority omitted).”

"Flight evidence is admissible because [it] tends to show consciousness of guilt." State v. Trujillo, 1979-NMCA-055, ¶ 4, 93 N.M. 728, 605 P.2d 236 (internal quotation marks and citation omitted). "[T]he prosecution is not required to establish the reason for a defendant's flight," and "a defendant's knowledge that he was being pursued is not a predicate to the admission of flight evidence." Pacheco, 2008-NMCA-131, ¶ 37.” State v. Veleta, 2023-NMSC-024 at 2.

In the case at hand, flight is subject to a similar analysis as tampering with evidence. Both are intended to deceive the police and are relevant to consciousness of guilt. Flight is the act of deceiving the police about the suspect’s location and tampering with evidence in the instant case is the act of deceiving the police by destroying evidence of negligence and a

necessary element of one theory of Negligent Use of Firearm as a predicate to involuntary manslaughter. Illegal drug use and abuse would also demonstrate the defendant acted without due caution and circumspection as charged in the alternative count.

“The reason for our holding was that attempts to suppress evidence are admissible to prove intent. *Id.* This holding is nothing more than a specific application of the rule that evidence showing consciousness of guilt is admissible. See State v. Trujillo, 95 N.M. 535, 541, 624 P.2d 44, 50 (1981) (evidence of flight or plan of flight or evidence of escape from incarceration is admissible because it tends to show consciousness of guilt); State v. Kenny, 112 N.M. 642, 646, 818 P.2d 420, 424 (Ct. App.) (evidence of flight is admissible even if ambiguous, and prejudice does not outweigh probative value even if defendant has other explanation for flight), cert. denied, 112 N.M. 499, 816 P.2d 1121 (1991).” State v. Ruiz, 119 N.M. 515 at 518 (1995).

The evidence that supports the charge of tampering with evidence and substance abuse should not be excluded as more prejudicial than probative. "[t]he fact that competent evidence may tend to prejudice [the] defendant is not grounds for exclusion of that evidence. The question is whether the probative value of the evidence was outweighed by its prejudicial effect." State v. Hogervorst, 1977-NMCA-057, P 46, 90 N.M. 580, 566 P.2d 828. Flight evidence, such as adopting an alias and fleeing to Mexico, is admissible to show consciousness of guilt. State v. Gibson, 1992-NMCA-017, P 33, 113 N.M. 547, 828 P.2d 980.

The fact that the State cannot prove to a certainty that the substance in the baggie was cocaine or some other illicit drug that is white and powdery in nature does not preclude the tampering charge from proceeding. Obviously, the defendant should not be able to benefit from the fact that she discarded evidence such that the State is unable to prove the exact nature of the evidence. State v. Arellano, 91 N.M. 195, 197, 572 P.2d 223, 225 (Ct. App. 1977) (affirming

tampering conviction where the defendant committed the overt act of giving his brother a loaded gun used in a homicide and instructed brother to "hold it for him"). Importantly, when a tampering conviction is based on concealing evidence, conviction is not predicated on actual recovery of the evidence. See State v. Johnson, 2004 NMSC 29, ¶¶ 3, 54, 136 N.M. 348, 98 P.3d 998.

The State agrees with the defendant that for a charge to remain joined with other charges for trial the test of cross-admissibility must be met. In this case, the evidence that is the basis for the tampering charge is admissible in the trial on the involuntary murder charge because it goes to consciousness of guilt and use of narcotics generally provided circumstantial evidence of negligence which is an essential element of the involuntary manslaughter charge. Likewise, the evidence of the homicide is relevant in the tampering trial because for the elements of tampering to be met the defendant had to have tampered with evidence related to some crime – in this case she tampered with evidence relevant to involuntary manslaughter.

The state also agrees with the defendant's argument that the test of cross-admissibility must be determined through an analysis of Rule 11-404(B). See Gallegos, 2007-NMSC-007, ¶¶ 20-21, 141 N.M. 185, 152 P.3d 828 Under Rule 11-404(B)(1), "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." **Nevertheless, evidence of a crime, wrong, or other act may permissibly be used for another purpose**, "such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Rule 11-404(B)(2). "It remains within a [district] court's discretion to admit evidence of . . . prior acts . . . when the [s]tate shows that such evidence is relevant to a material issue other than conformity with character." Martinez, 1999-NMSC-018, ¶ 30, 127 N.M. 207,

979 P.2d 718 (alteration, internal quotation marks, and citation omitted). The State must "identify and articulate the consequential fact to which the evidence is directed." *Gallegos*, 2007-NMSC-007, ¶ 22, 141 N.M. 185, 152 P.3d 828. *State v. Deangelo M.*, 2015-NMCA-019, 29, 344 P.3d 1019, 1030, 2014 N.M. App. LEXIS 105, \*24-25.

### **Conclusion**

In this case, as argued above, the evidence is relevant to the material issues of consciousness of guilt and negligence. Moreover, the tampering charge should not be severed as it is directly related to the involuntary manslaughter charge and the charges meet the test of cross-admissibility.

WHEREFORE, for the above-stated reasons the state respectfully requests this Court deny the defendant's motion to sever the tampering charge from the involuntary manslaughter charge.

Respectfully submitted,

/s/ Kari T. Morrissey  
Kari T. Morrissey  
Jason J. Lewis  
Special Prosecutors  
1303 Rio Grande Blvd. NW, Ste. 5  
Albuquerque, NM 87104  
T: 505-361-2138

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 31<sup>nd</sup> 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