

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

STATE OF NEW MEXICO,

PLAINTIFF,

VS.

ALEXANDER RAE BALDWIN III,

DEFENDANT.

No. D-0101-CR-2024-0013
Judge Mary Marlowe Sommer

**DEFENDANT ALEC BALDWIN'S MOTION *IN LIMINE* TO PRECLUDE
IMPROPER OPINION AND TESTIMONY FROM STATE'S WITNESS KENT JORGENSEN**

LEBLANC LAW LLC

Heather M. LeBlanc
823 Gold Ave. SW
Albuquerque, NM 87102
Tel: 505-331-7222
heather@leblanclawnm.com

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Luke Nikas (admitted *pro hac vice*)
Alex Spiro (admitted *pro hac vice*)
Michael Nosanchuk (admitted *pro hac vice*)
51 Madison Avenue, 22nd Floor
New York, NY 10010
Tel: 212-849-7000
lukenikas@quinnemanuel.com
alexspiro@quinnemanuel.com
michaelnosanchuk@quinnemanuel.com

Sara Clark (admitted *pro hac vice*)
700 Louisiana St., Ste. 3900
Houston, TX 77002
Tel: 713-221-7000
saraclark@quinnemanuel.com

Counsel for Alec Baldwin

TABLE OF CONTENTS

	<i>Page</i>
PRELIMINARY STATEMENT	1
BACKGROUND.....	1
ARGUMENT	6
I. LEGAL STANDARD	6
II. JORGENSEN MUST BE PRECLUDED FROM OFFERING IMPROPER OPINION AND TESTIMONY	7
CONCLUSION.....	10

TABLE OF AUTHORITIES

<i>Cases</i>	<i>Page</i>
<i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579 (1993).....	6
<i>State v. Alberico</i> , 1993-NMSC-047, 861 P.2d 192	6
<i>State v. Anderson</i> , 1994-NMSC-089, ¶ 14881 P.2d 29	6, 8
<i>State v. Consaul</i> , 2014-NMSC-030, 332 P.3d 850	6, 9
<i>State v. Torres</i> , 1999-NMSC-010, 976 P.2d 20	6, 8
<i>State v. Yopez</i> , 2021-NMSC-010, 483 P.3d 576	6, 7
<i>Other Authorities</i>	
Rule 11-401 NMRA.....	6, 8, 9
Rule 11-403 NMRA.....	6, 7, 9
Rule 11-702 NMRA.....	5, 6, 9

Defendant Alec Baldwin, by and through his attorneys Quinn Emanuel Urquhart & Sullivan, LLP and LeBlanc Law, respectfully moves this Court for an order precluding State's witness Kent Jorgensen from offering improper testimony and opinions, and in support thereof, submits the following.¹

BACKGROUND

On March 19, 2024, the State e-mailed counsel for Baldwin stating, "We will be adding Connor Rice, Paul Jordan, Ken Jorgensen [sic] and Robert Genoway to our witness list and will be happy to schedule them for pretrial interviews." Ex. B. The State did not indicate at that time that it would seek to qualify Jorgensen (whose first name is Kent) as an expert. Counsel for Baldwin conducted a pretrial interview of Jorgensen on April 1, 2024, at which point it became clear that the State did intend to have Jorgensen testify as an expert. *See* Ex. A (Transcript of 4/1/24 Pretrial Interview of Kent Jorgensen) at 25:12-14.

When asked if he had an understanding, based on his conversations with the State, of "the nature of the testimony that [he was] going to be asked to give" in this case, Jorgensen replied, "The way I understood is to talk about . . . the authority within the production, what's going on, on a set, who's – the responsibilities of those who are on the set and what's happening, the protocols for use of the firearms, that type of thing." *Id.* at 24:10-15. Yet by the end of his pretrial interview, it was clear that Jorgensen's expertise is limited to, at most, (1) the role of a "grip" in the film industry,² and (2) general industry safety guidelines and how they are developed from the

¹ Because there is no dispute as the facts that comprise Jorgensen's background and no testing or scientific knowledge is at issue, the Court can decide this motion on the pleadings without the need for an evidentiary hearing.

² On a film set, the "grip" department is responsible for setting up, adjusting, and breaking down tripods, dollies, tracks, jibs, cranes, and similar rigs to ensure that the camera and electrical departments are able to achieve their desired camera movements, angles, and lighting. According

perspective of labor and management. *See id.* at 49:19-24 (Q. “[S]o in this case . . . your understanding is you’re being asked to talk about your knowledge of safety standards generally. Is that correct?” A. “Yes, sir.”); *id.* at 55:3-5 (“[M]y expertise is specifically how labor and management interact together to provide a safe workplace.”).

Moments after Jorgensen confirmed his understanding that he was expecting to testify about his “knowledge of set safety standards generally,” the State interjected that it “certainly would reserve the right to ask him certain questions about what specifically happened on this set and elicit his opinions,” and that “[h]e would probably also be asked to tell us what his understanding is of the roles and responsibilities of a producer on a movie set.” *Id.* at 49:19-50:9. When asked if he believed he was qualified to give expert opinions on those issues, Jorgensen seemed to hedge. *Id.* at 50:10-17 (Q. “[B]ased on what you know today, Mr. Jorgensen, would you say that you’re qualified to offer opinions about all the things that [the State] just listed?” A. “Yes. I mean, giving -- being presented facts and make an opinion on, yes, and certainly, how productions work, I believe I’m an ex -- I can comment on those.”). And his responses to questions about his purported expertise in those areas confirmed that he is not qualified to opine on either.

Jorgensen has “never” worked as a producer on a film set and has no first-hand knowledge of what the job entails. *Id.* at 50:18-20; 55:12-16 (Q. “[Y]our knowledge of the roles and responsibilities of producers doesn’t come from any experience in actually firsthand in the role of a producer?” A. “No. No.”). Instead, his “knowledge . . . about the role of a producer” is based on his “interaction with producers” in his role as a union safety advocate, which sometimes involves “dealing with producers of what their safety responsibilities are according to OSHA.” *Id.*

to his IMDB page, Jorgensen has worked exclusively in the grip department on all 26 of the film projects on which he has been credited.

at 53:19-54:7; *see also id.* at 54:8-17 (Q. “And so the basis for your knowledge of the roles or requirements of a producer comes from your understanding of OSHA?” A. “And what I understand about business in the United States because . . . there’re things that OSHA requires of a business to protect their employees”). Jorgensen conceded, however, that his knowledge of OSHA does not make him any more qualified to talk about the role of a producer than he is qualified to talk about any other role on a film set—and that his perspective is limited to that of someone who “get[s] to sit at the children’s table and listen to the adults.” *Id.* at 54:18-55:5 (“because I get to sit at the children’s table and listen to the adults quite often, I have an idea of how other things are done, but my expertise is specifically how labor and management interact together to provide a safe workplace”). In total, Jorgensen’s “expertise” about the role of a producer is based on (a) his “knowledge of OSHA,” (b) his “understanding of [the] business environment in the United States,” (c) his “working with and talking to producers on and off set,” and (d) the fact that he is “a person who studied movies, so [he] listen[s] to producers and people talk about movies on television all the time.” *Id.* at 57:13-24.³

As to his knowledge of “what specifically happened” on the set of *Rust* (*id.* at 50:4-7), Jorgensen confirmed that he has none other than what he saw on television or heard anonymously from unidentified crew members after the accident occurred. Asked if he had “formed any specific opinions about what took place . . . on the set of *Rust*,” he stated that his “understanding” was that “because of the budget of the movie, certain shortcuts were taken to not have a qualified armorer and that there were other things that the employers -- or the -- the producers either ignored or were ignorant of their responsibilities that should have let him know that they had a safety issue going

³ Jorgensen also pointed to the fact that he has “lectured at many film schools,” but conceded that his lectures are limited to subject matters such as the “nature of the film industry,” “how you get into” the industry, and “what the industry’s about.” *Id.* at 51:15-25.

on on the set, including the crew not being happy.” *Id.* at 60:12-24. However, when he was asked to describe the “materials or documents or witnesses” that formed the basis for those opinions, he admitted that his opinions were based on nothing but “hearsay”—*i.e.*, “secondhand information,” “things [he’s] heard from people,” and things he’s “heard . . . on television or read on the internet.” *Id.* at 61:20-63:4.

For example, as to Ms. Gutierrez-Reed’s experience as an armorer, Jorgensen stated, “I have not seen anything of what her -- her experience is. I don’t know those types of things, except for the hearsay.” *Id.* at 63:13-24. And his opinions about *Rust*’s budget are based on conversations he had about a *different* film that purportedly involved some of the same producers. *Id.* at 64:6-12 (Q. “And so your knowledge of the budget or any issues related to the budget for *Rust* is based on your knowledge of the budget of a different film by the same producers?” Q. “Correct . . . it’s just assumptions.”). Similarly, Jorgensen’s opinions about “information getting up the chain to management or to the employers on the set of *Rust*” are not based on any “documents or communications” that he has seen, but rather on unidentified “crew members” who “talked about, you know, making comments about safety.” *Id.* at 64:13-65:3. At the same time, however, Jorgensen “tried to avoid getting too much into actually what happened because . . . it’s hearsay,” and he does not recall the names of anyone he spoke to because he “was trying not to pollute [his] mind” or “learn too much about it” in case he was “asked to say more about it” at some point. *Id.* at 40:22-41:2, 43:12-17.

Finally, Jorgensen made clear during his interview that he is not qualified to offer expert testimony on any issues related to firearms or firearm safety other than simply describing what the general industry safety guidelines say. In his role helping to develop those guidelines, Jorgensen does not contribute his own specialized knowledge of firearms or firearm safety; rather, he relies

on “subject matter experts from outside [his] committee” to determine how the safety guidelines should be written. *Id.* at 17:7-17 (describing his involvement in Safety Bulletin #1 as “work[ing] with the labor side to choose the [sub]committee members . . . that would write that bulletin,” “help[ing] in choosing subject matter experts from outside our committee who would be involved . . . in writing that bulletin,” and then “during the writing of it, [being] involved with wordsmithing [and] figuring out what the protocol should be.”). That is because Jorgensen has no specialized knowledge of firearms other than growing up in a household with a police officer, occasional target practice (though “not very often at all”), and “being a hunter at times” (though “not in the last 20 years”). *Id.* at 29:14-20, 31:12-19, 32:4-7. The CV he provided to the State represents that he is a “Skills and Safety Training Instructor” with respect to eleven different categories of skills, but firearms is not one of them. Ex. C at 1. Indeed, his CV’s only mention of weapons or firearms is in reference to a “Weapons Safety Working grouG” [sic]—in font that does not match the rest of the document (which, according to its properties, was last modified on April 22, 2024 at 2:43 PM, four minutes before it was emailed to the State):

- | Committees/Professional Groups |
|--|
| IATSE Safety Committee |
| IATSE Education and Training Committee |
| IATSE/USITT OSHA Alliance |
| IATSE Training Trust Fund |
| California OSHA Advisory Committee |
| Event Safety Alliance, ESTA/ANSI Working Group |
| ▪ Weapons Safety Working grouG |
| Entertainment Services and Technology Association (ESTA) |
| ESTA Technical Standards Program, Rigging Working Group |
| Entertainment Technician Certification Program (ETCP) |
| American National Standards Accredited Committee ANSI/SIA A92 |

Id. at 2; *see also* Ex. D.

ARGUMENT

I. LEGAL STANDARD

Under Rule 11-702 NMRA, “[a] witness who is qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise if the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.” Rule 11-702 NMRA. This rule encompasses “three prerequisites . . . for the admission of expert testimony: (1) experts must be qualified; (2) their testimony must assist the trier of fact; and (3) their testimony must be limited to the area of scientific, technical, or other specialized knowledge in which they are qualified.” *State v. Torres*, 1999-NMSC-010, ¶¶ 23-24, 976 P.2d 20 (citing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993)); accord *State v. Alberico*, 1993-NMSC-047, ¶¶ 43-45, 861 P.2d 192. The second condition “is primarily one of relevance.” *State v. Anderson*, 1994-NMSC-089, ¶ 14881 P.2d 29 (citing *Daubert*). And the third condition requires “the proponent of expert opinion testimony [to] show that the expert’s opinion has ‘a reliable basis in the knowledge and experience of his discipline.’” *Torres*, 1999-NMSC-010, ¶ 24 (quoting *Alberico*, 1993-NMSC-047, ¶ 45). “[T]he admission of expert testimony or other scientific evidence is peculiarly within the sound discretion of the trial court and will not be reversed absent a showing of abuse of that discretion.” *Alberico*, 1993-NMSC-047, ¶ 58.

In addition, under Rule 11-401, “[e]vidence is relevant if (A) it has any tendency to make a fact more or less probable than it would be without the evidence, and (B) the fact is of consequence in determining the action.” Rule 11-401 NMRA. The relevance requirement applies to all evidence, “including expert opinions.” *State v. Consaul*, 2014-NMSC-030, ¶ 67, 332 P.3d 850. In short, Rule 11-401 requires that expert testimony be “probative and ‘material to the

particular case.” See *State v. Yopez*, 2021-NMSC-010, ¶ 19, 483 P.3d 576 (quoting *Alberico*, 1993-NMSC-047, ¶¶ 53, 55).

Finally, even if the expert testimony is relevant and otherwise admissible under Rule 11-702, Rule 11-403 provides that the court may still exclude the evidence “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” See *State v. Yopez*, 2021-NMSC-010, ¶ 19, 483 P.3d 576 (citing Rule 11-403 NMRA).

II. JORGENSEN MUST BE PRECLUDED FROM OFFERING IMPROPER OPINION AND TESTIMONY

Based the foregoing standards, Jorgensen must be precluded from offering improper expert testimony on matters that are outside of his knowledge and expertise and/or irrelevant to any issue that jurors will be asked to decide. Accordingly, Jorgensen must be precluded from offering expert testimony regarding firearms and firearm safety, because he lacks specialized knowledge in those areas. He must be precluded from testifying about what took place on the set of *Rust*, because he admitted he has no personal knowledge from which to testify. And he must be precluded from offering expert testimony regarding “the roles and responsibilities of a producer on a movie set,” both because he is not qualified as an expert on that subject and because such testimony is irrelevant to any issue that jurors in this case will be asked to decide.

First, Jorgensen must be precluded from testifying about matters outside of his knowledge and expertise. This includes expert testimony concerning firearms and firearm safety and testimony about the “roles and responsibilities of a producer on a movie set.” Ex. A at 49:19-50:9. As demonstrated above, Jorgensen is not qualified to offer expert testimony about firearms or firearm safety. Although he chairs the committee that oversees the development of safety guidelines for a broad range of activities across the film industry, he does not claim to be an expert

in each area. He does not claim to be an expert, for example, on venomous reptiles, parachuting and skydiving, poisonous plants, or railroads. *See* Ex. E at 1-4. Nor does he claim to be an expert in firearms—which is why part of his job is to “help in choosing subject matter experts from outside [his] committee” to determine how the safety guidelines on any given topic should be written. *Id.* at 17:7-17. Indeed, he admitted that has no specialized knowledge of firearms other than growing up in a household with a police officer, occasional target practice (though “not very often at all”), and “being a hunter at times” (though “not in the last 20 years”). *Id.* at 29:14-20, 31:12-19, 32:4-7.

Jorgensen is similarly unqualified to give expert testimony about the “roles and responsibilities of a producer on a movie set.” *Id.* at 49:19-50:9. He has “never” worked as a producer on a film set and has no first-hand knowledge of what the job entails. *Id.* at 50:18-20; 55:12-16 (Q. “[Y]our knowledge of the roles and responsibilities of producers doesn’t come from any experience in actually firsthand in the role of a producer?” A. “No. No.”). And experiences “dealing with producers” in his capacity as a union safety advocate (*id.* at 53:19-54:7) or “sit[ting] at the children’s table and listen[ing] to the adults” (*id.* at 54:18-55:5) do not provide him with the specialized skills or knowledge that are required of someone who seeks to testify as an expert.

Jorgensen must also be precluded from testifying about “what specifically happened” on the set of *Rust* (*id.* at 50:4-7), because he confirmed that he has no personal knowledge of the facts other than what he saw on television or heard anonymously from unidentified crew members after the accident occurred. *Id.* at 60:12-24, 61:20-63:4, 63:13-24, 64:13-65:3 (stating that his understanding of the film’s budget, the armorer’s experience, the crew’s impressions, and the producers’ oversight is based on “secondhand information,” “hearsay,” things he’s “heard . . . on television or read on the internet,” and his own “assumptions”).

Second, even if Jorgensen were qualified to offer expert testimony regarding the “roles and responsibilities of a producer on a movie set,” such testimony is patently improper because it has nothing to do with any issue that jurors will be asked to decide. *Id.* at 49:19-50:9. To be admissible, expert testimony must “assist the trier of fact,” which is “primarily [a question] of relevance.” *Torres*, 1999-NMSC-010, ¶¶ 23-24; *Anderson*, 1994-NMSC-089, ¶ 14. In addition, under Rule 11-401 NMRA—which applies to expert opinions—evidence is only relevant if “(A) it has any tendency to make a fact more or less probable than it would be without the evidence, and (B) the fact is of consequence in determining the action.” Rule 11-401 NMRA; *Consaul*, 2014-NMSC-030, ¶ 67.

Testimony regarding the “roles and responsibilities of a producer on a movie set” would do nothing to “help the trier of fact to understand the evidence or to determine a fact in issue.” Rule 11-702 NMRA. The State instructed the grand jury that to return an indictment, it had to find probable cause that Baldwin “negligently used a deadly weapon”—or, in the alternative, “discharged a firearm during the production of a movie without first verifying the firearm contained no live ammunition and while the firearm was pointed in the direction of another”—and that “the death was a foreseeable result of” one of these alleged acts. Ex. F (Transcript of 1/19/24 Grand Jury Proceedings) at 95:23-96:9, 97:2-16, 97:21-98:3. The fact that Baldwin was a producer of the film has nothing to do with the allegation that he “negligently used a deadly weapon” or any allegation that he “discharged a firearm during the production of a movie without first verifying the firearm contained no live ammunition.” And nothing about the “roles” or “responsibilities” of a producer is relevant to the jury’s determination of whether those allegations are true. The allegation that Baldwin negligently used a deadly weapon on a movie set is not made “more or less probable” based on whether or not he is credited as a producer. *See* Rule 11-401 NMRA.

Third, even if Baldwin’s role as a producer were relevant to the jury’s determination of any issue in this case (which it is not), and even if Jorgensen were qualified to offer any expert opinions on the roles and responsibilities of producers (which he isn’t), such testimony would still be improper under Rule 11-403, because it would only cause confusion and/or mislead the jury. *See* Rule 11-403 NMRA. Similarly, even if Jorgensen were qualified to offer any expert opinions about firearms or firearm safety (which he isn’t), such testimony would be improper because it would be unnecessarily cumulative of testimony the State intends to elicit from other witnesses the State has designated as experts specifically for that purpose.

CONCLUSION

For the foregoing reasons, Jorgensen should be precluded from offering expert testimony about firearms, firearm safety, and the “roles and responsibilities of a producer on a movie set,” as well as any testimony about “what specifically happened” on the set of *Rust*.

Date: June 14, 2024

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: /s/ Luke Nikas

Luke Nikas (admitted *pro hac vice*)
Alex Spiro (admitted *pro hac vice*)
Michael Nosanchuk (admitted *pro hac vice*)
51 Madison Avenue, 22nd Floor
New York, NY 10010
Tel: 212-849-7000
lukenikas@quinnemanuel.com
alexspiro@quinnemanuel.com
michaelnosanchuk@quinnemanuel.com

Sara Clark (admitted *pro hac vice*)
700 Louisiana St., Ste. 3900
Houston, TX 77002
Tel: 713-221-7000
saraclark@quinnemanuel.com

John F. Bash (admitted *pro hac vice*)
300 W. 6th St., Suite 2010
Austin, TX 8701
Tel: 737-667-6100
johnbash@quinnemanuel.com

LEBLANC LAW LLC

Heather M. LeBlanc
823 Gold Ave. SW
Albuquerque, NM 87102
Tel: 505-331-7222
heather@leblanclawnm.com

Counsel for Alec Baldwin

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2024, a true and correct copy of the foregoing brief was emailed to opposing counsel.

/s/ Heather LeBlanc _____
Heather LeBlanc