

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

Motion In Limine No. 7

**DEFENDANT ALEC BALDWIN'S MOTION *IN LIMINE* TO PRECLUDE
ARGUMENT, TESTIMONY, AND EVIDENCE RELATED TO THE INCIDENT FROM *THE CROW***

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
Fax: 212-849-7100
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
Fax: 737-667-6110
saraclark@quinnemanuel.com

Counsel for Alec Baldwin

Defendant Alec Baldwin, by and through his attorneys, submits this motion *in limine* to preclude argument, testimony, and evidence related to the incident or the underlying facts from *The Crow*.

ARGUMENT

At a hearing held on June 21, 2024, the State previewed a specious argument that it apparently intends to make to the jury: “Even if there’s not a live round on set and she put a blank in instead of a dummy and the gun had a barrel obstruction, Halyna Hutchins is dead.” Ex. A (6/21/24 Hr’g Tr.), at 105:15-23. In connection with this argument, the State mischaracterized an incident from over 30 years ago, stating that these were “the circumstance[s] of the death of Brandon Lee, that almost everybody who works in the film industry is familiar with.” *Id.* at 105:12-14. That argument has no place in this trial. It will only confuse the issues, mislead the jury, and result in a minitrial about an incident that occurred more than 30 years ago. The State should be precluded from introducing argument, testimony, and evidence related to the incident or the type of incident that took place on the set of *The Crow*.

First, the crime of involuntary manslaughter occurs when “a *convergence* of the proper act and state of mind requirements result in the death of an individual.” *State v. Henley*, 2010-NMSC-039, ¶ 14, 237 P.3d 103 (emphasis added). It is undisputed that Halyna Hutchins’ death was caused by a live round, not a blank round. That is why the State instructed the grand jury that to return an indictment, it needed to find probable cause that Halyna Hutchins’ death was a “foreseeable result of . . . Baldwin discharging 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.” Ex. B (Tr. of 1/19/24 Grand Jury Proceedings), at 97:21-98:1 (citing Uniform Jury Instruction 14-251). The presence of blank ammunition on the set of *Rust* is not what gave rise to the harm resulting in Hutchins’ death, and it is not the risk or conduct referenced in the grand jury

instructions or Baldwin's indictment. Put simply, there is no "convergence of the proper act and state of mind requirements result[ing] in the death of an individual," *State v. Henley*, 2010-NMSC-039, ¶ 14, 237 P.3d 103, if the State intends to show that Halyna Hutchins' death was a "foreseeable result of . . . Baldwin discharging a firearm during the production of a movie without first verifying the firearm contained no *live ammunition*" because he didn't check for *blanks*. It was either foreseeable that Hutchins' death would result from Baldwin's failure to check for live ammunition, or it wasn't. The issue of non-live ammunition is legally irrelevant.

Second, nor should the State be permitted to argue that because a movie set death that occurred over 30 years ago involved *blank* ammunition, Baldwin should have known that failing to check for a *live* round could also cause someone's death. Both events were unforeseeable to the gun handler for two totally different reasons. In *The Crow*, after the crew ran out of dummy rounds, a crew member decided to make his own dummy rounds using real bullets. As he was emptying the gun power out of live rounds, he failed to completely empty one of the rounds, such that one of the dummy rounds contained some leftover gunpowder residue. The scene that involved the dummy rounds did not involve any actors. As the revolver was being filmed with the dummy rounds in it, the dummy round with gunpowder residue ignited, causing the tip of the dummy round to pop off its shell casing and get lodged into the barrel of the gun. Weeks later, after the prop master failed to clear the gun or check the barrel, a blank round was loaded into the revolver and fired, dislodging the tip of the dummy round and projecting it out of the barrel, killing the actor who was standing in the line of fire. After a lengthy investigation, the District Attorney concluded that there was no criminal intent and did not bring criminal charges—because neither the prop master nor the actor handling the gun knew that a third crew member had negligently brought live rounds to set and used them to create homemade dummy rounds. By contrast, the

State's theory of foreseeability, and Baldwin's defenses, are entirely distinct from the circumstances on *The Crow*. The State shouldn't be permitted to draw an inference of foreseeability here by asking the jury to consider the distinct circumstances from *The Crow* or similar circumstances—especially when it has no witness to testify about what actually occurred in *The Crow*.

Third, if the State raises any argument based on the incident on *The Crow* or a theory that the combination of a blank round and a barrel obstruction could create a fatal risk, Baldwin would have no choice but to present a substantial amount of evidence and testimony explaining the facts of that case and why they are distinguishable from the facts of this case, including because of the way the dummy rounds were made, the way the crew handled those rounds, and the way the guns were checked. Baldwin would also be entitled to present evidence showing that this happened one time in the history of filming, while millions of rounds or more have been shot on movie sets without any harm. The Court should exclude irrelevant evidence that would create a trial within a trial and substantially prolong the trial in this case. *See, e.g., State v. Marquez*, 1998-NMCA-010, ¶ 25, 951 P.2d 1070.

Finally, presenting this theory to the jury is likely to confuse and mislead the jury about the facts at issue, the relevant risk in this case, and the appropriate foreseeability assessment. It creates a significant risk that the jury may find Baldwin should have known of the substantial risk that led to Hutchins' death—and therefore that the State has satisfied the subjective awareness requirement of New Mexico law—based on the belief that he should have been aware of an entirely different risk that the gun could have a homemade, broken-off dummy bullet lodged in the barrel that could then become fatal when mixed with a blank. Accordingly, under Rule 11-403 NMRA,

the Court should exclude this theory and any reference to the set of *The Crow* or the type of circumstances that happened on that movie set.

CONCLUSION

For the above reasons, the Court should preclude argument, testimony, and evidence related to the incident or the underlying facts from *The Crow* or the type of incident that happened on *The Crow*.

Date: June 24, 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 24, 2024, a true and correct copy of the foregoing brief was emailed to opposing counsel.

/s/ Heather LeBlanc _____
Heather LeBlanc

EXHIBIT A

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,)	
)	
Plaintiff,)	No.
)	D-0101-CR-2024-0013
vs.)	
)	
ALEC RAE BALDWIN III,)	
)	
Defendant.)	
)	

TRANSCRIPT OF REMOTE PROCEEDINGS

JUNE 21, 2024

9 A.M. MOUNTAIN TIME

SANTA FE, NEW MEXICO

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1 which is absolutely false, what he's telling the
2 Court is unless this gun has a live round in it, it
3 is completely harmless. And he didn't realize that
4 there was a live round in it. Patently false.

5 Mr. Baldwin himself, as I recall, had a
6 conversation with law enforcement, and I may be
7 wrong, I've read a lot of transcripts. He indicated
8 an awareness that if he is handed a gun that has a
9 blank round in it but also has a barrel obstruction,
10 that is fatal. That can kill someone and has
11 historically killed people.

12 I believe that is the circumstance of the
13 death of Brandon Lee, that almost everybody who works
14 in the film industry is familiar with.

15 So Mr. Baldwin didn't necessarily have to
16 know there's live ammunition in this gun. He had to
17 understand that the gun is real. Real guns are
18 dangerous. Dummies look exactly like live ammo.
19 Even if there's not a live round on set and she put a
20 blank in instead of a dummy and the gun had a barrel
21 obstruction, Halyna Hutchins is dead. She's dead,
22 and she's dead because he didn't participate in the
23 safety check.

24 And, listen, we agree and we have always
25 agreed that under the SAG guidelines, which do not

EXHIBIT B

GRAND JURY 01/19/2024, 0838

MS. MORRISSEY: Okay. We are back on the record. Today is January 19th, 2024. Time is 8:49 a.m. There's never going to be a time I do something that I don't have to be corrected. It's not going to happen. We are continuing the grand jury presentation in -- with the target Alexander Baldwin. In the room, we have the grand jurors, the court monitor, a trainee for the court monitor. We do have two Spanish interpreters for one of our grand jurors, and sir, would you state your name? I can see that you're different than the -- the lady that we had here yesterday.

MR. ORTIZ: Yes. I'm Christian Ortiz (ph), certified court interpreter for New Mexico, and I have been sworn in already, so.

MS. MORRISSEY: Okay. Great. And for the record, your name?

MS. DRAKE: Marissa Drake.

MS. MORRISSEY: Okay. And -- and you're being trained today. Okay. Great. In addition to that, we have Shadrick Boe (ph), Kent Whalquist, and Jason Lewis.

I want to take a moment, if -- if it's okay, to -- if you recall, when I read the elements instructions initially, we -- we had some language in there that -- that was more designed for criminal trials and not grand

1 property.

2 "Count II, alternative, involuntary manslaughter
3 without due caution and circumspection. 14 231
4 involuntary manslaughter essential elements. For you to
5 return a true bill on the charge of involuntary
6 manslaughter, you must find probable cause as to each of
7 the following elements: The target discharged a firearm
8 during the production of a movie without first verifying
9 the firearm contained no live ammunition and while the
10 firearm was pointed in the direction of another; two,
11 the target should have known of the danger involved from
12 the target's actions; three, the target acted with
13 willful disregard for the safety of others; four, the
14 target's act caused the death of Halyna Hutchins; five,
15 this happened in New Mexico on or about October 21st,
16 2021.

17 "14 251 homicide approximate cause defined. In
18 order -- in addition to the other elements of the crime
19 of involuntary manslaughter as set forth in instruction
20 number 14 231, you must find probable causes to each of
21 the following elements: One, the death was a
22 foreseeable result of Alec Baldwin negligently using a
23 firearm or Alec Baldwin discharging a firearm during the
24 production of a movie without first verifying the
25 firearm contained no live ammunition and while the

1 firearm was pointed in the direction of another; two,
2 the act of the target was a significant cause of the
3 death of Halyna Hutchins. The target's act was a
4 significant cause of death if it was an act which, in a
5 natural and continuous chain of events uninterrupted by
6 an outside event, resulted in the death and without
7 which the death would not have occurred. There may be
8 more than one significant cause of death. If the acts
9 of two or more persons significantly contributed to the
10 cause of death, each act is a significant cause of
11 death.

12 "14 252 homicide negligence of deceased or third
13 person. The state must prove beyond -- must prove
14 probable cause that the target's act was a significant
15 cause of the death of Halyna Hutchins. An issue in this
16 case is whether the negligence of a person other than
17 the target may have contributed to the cause of death.
18 Such contributing negligence does not relieve the target
19 of responsibility for the act that significantly
20 contributed to the cause of the death so long as the
21 death was a foreseeable result of the target's actions.
22 However, if you find the negligence of a person other
23 than the target was the only significant cause of death
24 or constitutes an intervening cause that breaks the
25 foreseeable chain of events, there is no probable cause