

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

**STATE OF NEW MEXICO,  
Plaintiff,**

**v.**

**No. D-101-CR-2024-00013**

**ALEXANDER RAE BALDWIN III,  
Defendant.**

**ORDER DENYING DEFENDANT ALEC BALDWIN'S MOTION TO DISMISS  
THE INDICTMENT FOR FAILURE TO ALLEGE A CRIMINAL DEFENSE**

This matter came before this Court on Defendant Alec Baldwin's Motion to Dismiss the Indictment, filed on May 6, 2024. The Court having considered the briefing, entertained oral argument, and being otherwise fully advised, FINDS, CONCLUDES, AND ORDERS:

**PROCEDURAL SUMMARY**

1. The Court has jurisdiction over the Parties and this matter.
2. Defendant filed Defendant Alec Baldwin's Motion to Dismiss the Indictment for Failure to Allege a Criminal Defense on May 6, 2024.
3. The State filed its response to Defendant Alec Baldwin's Motion to Dismiss the Indictment for Failure to Allege a Criminal Offense on May 21, 2024.
4. Defendant filed his Reply Brief in Further Support of Motion to Dismiss the Indictment for Failure to Allege a Criminal Defense on June 5, 2024.
5. The Court heard oral argument on the motion on June 21, 2024.

**DISCUSSION**

**Dismissal as a Matter of Law**

6. Rule 5-601(C) NMRA states "[a]ny defense, objection or request which is capable of determination without a trial on the merits may be raised before trial by motion."
7. Whether a pretrial motion to dismiss is proper is governed by caselaw. *State v. Foulentfont*, 1995-NMCA-028, ¶¶ 5-7, 119 N.M. 788 (holding that a court may dismiss

charges when “[w]hen the applicability of an aggravating circumstance presents a question of law capable of determination without trial. . .”).

8. The Defendant argues the following undisputed facts from *State of New Mexico v. Hannah Gutierrez*, D-101-CR-2023-00040 (“*State v. Gutierrez*”), supporting dismissal of the case: 1) the State asserted it was incomprehensible that live rounds would be on the movie set; 2) the State suggested that firearm safety was the sole responsibility of the armorer; 3) witnesses testified that the firearm had been checked by the assistant director with the armorer just before it was handed off to Defendant Baldwin; and, 4) witnesses testified the assistant director yelled out, “cold gun,” which led “everyone” to believe it only contained dummy rounds.
9. The Defendant argues that the above articulated facts demonstrate that he did not, as a matter of law, commit a crime because the above facts negate the Defendant’s ability to form the requisite state of mind for the charge.
10. The State argues that they will present the following facts to establish Defendant’s criminal negligence: 1) Defendant had reason to believe that the assistant director would [only] periodically check the gun; 2) the armorer was not qualified and Defendant as producer did not do anything to verify her experience; 3) Defendant knew he had a real gun in his hand; 4) he failed to participate in the standard and customary safety check; 5) he understood dummy rounds and live rounds could be easily co-mingled, and; 6) he violated decades old gun safety and movie set safety standards by point the gun at a person, cocking it and pulling the trigger, particularly during rehearsal/blocking which did not require the actor to do so.
11. In order to determine whether the facts raised by the Defendant are enough to demonstrate that he could not have had the requisite state of mind the Court looks to the jury instructions for guidance. To convict a Defendant of involuntary manslaughter, the State must prove that Defendant: 1) committed an act; 2) should have known of the danger involved in his actions; 3) acted with a willful disregard for the safety of others, and; 4) the act caused the death of the victim. *See* UJI 14-231 NMRA.
12. Additionally, the act must have been committed with a criminally negligent state of mind. New Mexico’s criminal negligence jury instruction incorporates the standard for recklessness, and reckless disregard. *See* UJI 14-133 NMRA (requiring the jury to find “the defendant acted with willful disregard of the rights or safety of others and in a manner which endangered any person or property.”).
13. Said another way, “[t]o be convicted of involuntary manslaughter, a defendant must have been aware of the risk caused by his or her conduct and continued to act.” *State v. Henley*, 2010-NMSC-039, ¶ 16, 148 N.M. 359.

14. Given the above context, the Court must also recognize limitations stated in Rule 5-601(C). Pretrial dismissal is inappropriate if the State could reasonably assert the availability of additional evidence to show the missing element. *State v. Gomez*, 2003-NMSC-012, ¶ 7, 133 N.M. 763; *State v. Pacheco*, 2017-NMCA-014, ¶ 10, 388 P.3d 307.
15. The Court of Appeals also cautions that disputed facts are for the jury to resolve. See *State v. Muraida*, 2014-NMCA-060, ¶ 12, 326 P.3d 1113 (“Questions of fact are the unique purview of the jury and, as such, should be decided by the jury alone.”); see also *LaPietra*, 2010-NMCA-009, ¶ 7, 147 N.M. 569.
16. Specifically, the question of “a defendant’s knowledge or intent generally presents a question of fact for a jury to decide.” *State v. Wasson*, 1998-NMCA-087, ¶ 12, 125 N.M. 656; *Muraida*, 2014-NMCA-060, ¶ 18. The Court reviews Defendant’s request with this in mind.
17. In this case, the Defendant contends that the undisputed facts he presented make a jury determination finding criminal negligence impossible as a matter of law. However, the State has met its burden to show a factual dispute from which a reasonable juror could find criminal negligence based on the State’s asserted facts.
18. The Defendant asks this Court to weigh his presented facts against the facts presented by the State. To do so before trial would usurp the jury’s role to make a factual determination regarding Defendant’s state of mind.
19. Here, the Court concludes whether the Defendant had a criminally negligent state of mind is a question of fact for the jury to decide. The Court therefore DENIES the Defendant’s Motion on the grounds that the question presented by the Defendant is one of fact rather than law.

### **Inconsistent Theories**

20. Defendant additionally contends that the State is prohibited from presenting inconsistent theories of prosecution. Conversely, the State argues that the Defendant was separately negligent in his actions, and that any inconsistent facts or theories presented in *State v. Gutierrez* are not inherently contradictory to the case against the Defendant.
21. The Defendant argues that during *State v. Gutierrez*, the State focused on Ms. Gutierrez’s sole responsibility as the armorer, and on the feeling that the incident was incomprehensible, or shocking to the crew because of their belief that no live ammunition was on set. He also points out that witnesses in *State v. Gutierrez* testified that the

Defendant was not strictly required to check the gun after the armorer checked it, and that many actors do not check the gun themselves.

22. The State asserts that it will present different evidence to highlight the Defendant's specific actions that led to the victim's death. The State argues that the theories do not contradict one another because the State's theory against the Defendant is based on his responsibilities, not on Ms. Gutierrez's responsibilities. Rather, the State asserts, each had an independent responsibility not to act negligently.
23. There are cases where the State's inconsistent theories of guilt against two defendants in the same matter violate due process. *See, e.g., United States v. Ganadonegro*, 854 F. Supp. 2d 1088, 1097 (D.N.M. 2012). However, "this restriction applies only in limited circumstances and almost exclusively in cases involving multiple defendants." *Id.* For example, the *Ganadonegro* court reasoned such a situation would present itself if, for example, using the same witness' contradictory statements the prosecutor convicted two defendants of the same murder. *See id.* at 1097-1098. Inconsistent theories are impermissible when the "prosecution's theories of the same crime in the two different trials negate one another." *Drake v. Kemp*, 762 F.3d 1449, 1479 (11th Cir. 1985) (Clark, J., concurring).
24. In this case, the Defendant has not shown that the facts presented by the State are so contradictory that they negate the theory presented by the prosecution in *State v. Gutierrez*. For example, witnesses testified that it was normal for the Defendant not to check the weapon himself. Nonetheless, the State may argue that such testimony does not necessarily negate Defendant's behavior in light of other allegedly unsafe circumstances on set.
25. The facts presented by the State aim to establish a separate course of criminally negligent conduct, and do not tend to negate the State's theory presented in *State v. Gutierrez*.
26. Therefore, the Court DENIES the Defendant's motion on the grounds that the theories presented are not directly contradictory.

## CONCLUSION

**IT IS THEREFORE ORDERED** that Defendant Alec Baldwin's Motion to Dismiss the Indictment for Failure to Allege a Criminal Offense is hereby **DENIED**.

IT IS HEREBY ORDERED:



MARY MARLOWE SOMMER  
DISTRICT COURT JUDGE  
DIVISION VIII

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date of acceptance for e-filing a true and correct copy of the foregoing was e-served on counsel registered for e-service in this matter as listed below.

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