FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
7/1/2024 8:36 PM
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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 RESPONSE TO THE STATE'S MOTION *IN LIMINE* 10 TO EXCLUDE HEARSAY STATEMENTS ALLEGEDLY MADE BY HALYNA HUTCHINS

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Defendant Alec Baldwin, by and through his attorneys, submits this response to the State's motion *in limine* number 10 to exclude evidence and testimony related to alleged statements made by Halyna Hutchins before the accident.

ARGUMENT

The State argues that "the Court should exclude testimony from defense witnesses (and possibly the defendant) that Ms. Hutchins instructed Mr. Baldwin where to point the gun thus causing him to point the gun at her and kill her." Mot. ¶ 1. The State's attempt to exclude this critical fact—that Baldwin was being directed where to point the gun in the moments before the accident—is misguided and wrong.

First, what Ms. Hutchins said to Baldwin moments before the gun went off is not hearsay. Her statements aren't factual assertions and are not being offered for the truth of the matter. *See State v. Saiz*, 2017-NMCA-072, ¶ 34, 404 P.3d 422 (noting that "statements or conduct which are non-assertive are not hearsay" (quotation omitted)). Instead, Ms. Hutchins' statements reflect directives that she gave to Baldwin on where to point the gun that multiple witnesses recall being given moments before the gun went off. *See State v. Toney*, 2002-NMSC-003, ¶ 3, 40 P.3d 1002 (holding statement was "a directive or a command and was offered not for its truth but for the fact that it was made"); *Jim v. Budd*, 1987-NMCA-079, ¶ 10, 760 P.2d 782 (holding "a direction" was "not an assertion that would either be true or false" and the "utterances were not offered to prove the truth of [the declarant's] words, or his state of mind or feelings"). This evidence may be offered "for the non-hearsay purpose of establishing an effect upon the listener." *High Desert Bicycles, Inc. v. New Mexico Tax'n & Revenue Dep't*, 2020 WL 2097507, at *1 (N.M. Ct. App. Apr. 22, 2020). The directives Baldwin received are highly probative of, among other things, the reasons he used the firearm in the way he did, and the reasonableness of his actions under the circumstances

based on his belief that it was safe for him to do so. *See id.* (citing *State v. Johnson*, 1983-NMSC-043, ¶ 17, 662 P.2d 1349).

Second, the statements would also be admissible under exceptions to the hearsay rule, even if they were hearsay (they clearly aren't), including the declarant's then-existing state of mind and the state of mind of the *Rust* crew. *See* Rule 11-803(3) NMRA. For example, Ms. Hutchins gave her directives to Baldwin on where to point the gun in front of several crew members (including Dave Halls, the principal safety officer on set) who had been on the movie set for several days, seen the work of the armorer, and had experience on other movie sets. Yet no one in the church expressed any concern about Ms. Hutchins' directive, sought to stop Baldwin from following it, sought to stop Baldwin from pointing the gun, or expressed having any fear for the safety of the cast or crew in that moment. Ms. Hutchins and the crew, like Baldwin, reasonably believed Baldwin's conduct did not pose a serious danger to human life or safety. This circumstantial evidence of the reasonableness of Baldwin's conduct and the absence of risk are probative of the declarant's state of mind, as well as the impact of the statement on the witnesses in the church, and by extension this evidence is relevant to Baldwin's state of mind as well. *See Saiz*, 2017-NMCA-072, ¶ 35 ("The statement is relevant and offered into evidence because the statement was made to Defendant at the time and under the circumstances that it was made to Defendant."); *see also State v. Henley*, 2010-NMSC-039, ¶ 16, 237 P.3d 103 ("Criminal negligence in the context of involuntary manslaughter *requires subjective knowledge* by the defendant of the danger or risk to others posed by his or her actions.") (emphasis added).

The State's other arguments are meritless. The State argues that testimony by some witnesses in the church should be excluded because it conflicts with testimony by other witnesses in the church. But this goes to the weight of the testimony, not its admissibility. *See State v.*

Gurule, 2004-NMCA-008, ¶ 38, 82 P.3d 975 ("It is up to the jury to weigh the testimony and contradictory evidence and believe or disbelieve any testimony it hears."). And the State concedes that the trustworthiness requirement generally does not apply under Rule 11-803(3) NMRA. In fact, the one case it cites on this issue stands for the exact opposite conclusion. In *United States v. Sablan*, 2008 WL 700172, at *19 (D. Colo. Mar. 13, 2008), the court did not find that a statement was inadmissible under Rule 803(3) because it was untrustworthy; instead, it found that the statement was untrustworthy because it didn't fall within the exception to begin with. Regardless, the critical question under Rule 803(3) is not the trustworthiness of the witness offering the statement; it is the trustworthiness of the declarant herself. *See id.* ("statements relating to a person's state of mind have probative value mainly because the *declarant* has no chance to reflect upon and perhaps misrepresent his situation") (emphasis added). Here, the State does not contend that Hutchins had "time to reflect on the situation and thus may have had a motive to misrepresent his situation." *Id.*

The State's arguments about relevance also fall flat. It claims that the New Mexico Supreme Court has found that "statements concerning the victim's state of mind was irrelevant, but rather only the defendant's state of mind was relevant to the issues." Mot. ¶ 5 (citing *State v. Leyba*, 2012-NMSC-037, ¶ 15, 289 P.3d 1215). That case is irrelevant here. In *Leyba*, the *State* was seeking to admit statements purporting to show the victim's state of mind for the improper purpose of introducing evidence of the defendant's prior bad acts. *See id.* (rejecting state's argument that declarant's diary entries were relevant "because it provided evidence of prior violence by Defendant toward Sarah . . . [which] would have changed [an expert's] opinion regarding Defendant's ability to form the deliberate intent to kill Sarah"). Specifically, in *Leyba*, the statements at issue were made in the victim's diary, to which the defendant was not privy, and

therefore could not possibly have influenced the defendant's state of mind. *See id.*, ¶ 14. By contrast, here, Hutchins' directions were given directly to Baldwin, which, among other things, influenced his state of mind and show the important circumstances of the charged conduct. The State has repeatedly argued that Baldwin acted recklessly by going "off-script" and "without warning, act[ing] on his own volition." *See* State's Response to Baldwin's Motion to Dismiss the Grand Jury Indictment (April 5, 2024), at 5; *see also* State's Response to *Foulenfont* Motion (May 21, 2024), at 8. The State seeks to preclude evidence that is relevant to one of its core theories of liability.

The State wants to tell the jury everything that happened to explain the actions of the crew members in the church and Alec Baldwin's conduct, except what Halyna Hutchins said in the critical moment. Even if Hutchins' statements were hearsay (which they are not), the State can't do that. *See United States v. Lopez-Medina*, 596 F.3d 716, 735 (10th Cir. 2010) (admission of hearsay upheld under rule of completeness after defense counsel elicited inadmissible evidence); *Holmes v. South Carolina*, 547 U.S. 319, 324-25 (2006) (noting a criminal defendant's constitutional right to "present a complete defense" cannot be abridged by "arbitrary" or "disproportionate" evidentiary limitations). The State cannot rely on circumstantial evidence in its attempt to prove that Baldwin acted with a criminally negligent state of mind, and then turn around and prevent Baldwin from relying on his own evidence to the contrary. It is Evidence 101 that what Ms. Hutchins said to Baldwin moments before the gun went off is not hearsay. It is not being offered for the truth of her statement. It is, instead, an important piece of evidence about what happened in the church on October 21. Furthermore, whatever the State hopes to achieve by precluding this testimony, as a practical matter, it can't be done. Multiple witnesses heard Hutchins make statements directing Baldwin where to point the prop. If those witnesses are called

to testify and asked what they saw and heard in the church that day, is it the State's position that they should be forced to lie?

Denying Baldwin the opportunity to introduce evidence about what occurred in that moment—what information impacted his state of mind, the level of risk that he perceived in that moment, and evidence about what Baldwin saw other crew members do in reaction to Ms. Hutchins' statement (which likewise is relevant to Baldwin's state of mind)—is highly probative evidence that must be admitted.

The Court should deny the motion.

Date: July 1, 2024

Respectfully submitted,

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Certificate of Service

I hereby certify that on July 1, 2024, a true and correct copy of the foregoing brief was emailed to opposing counsel.

/s/ Heather LeBlanc
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