

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

STATE OF NEW MEXICO,

Plaintiff,

No. D-101-CR-2024-00013

vs.

Judge Mary Marlowe Sommer

ALEXANDER BALDWIN,

Defendant.

**STATE'S RESPONSE TO DEFENDANT'S MOTION *IN LIMINE***  
**TO PRECLUDE ARGUMENT, EVIDENCE AND TESTIMONY**  
**RELATED TO THE INCIDENT FROM *THE CROW*.**

COMES NOW the State of New Mexico by and through Special Prosecutors, Kari T. Morrissey and Erlinda O. Johnson, and hereby respectfully submits the following response in opposition to Defendant Alexander Baldwin's motion *in limine* to preclude improper argument, evidence and testimony related to the incident from *The Crow*, and in support thereof submits the following.

Testimony and evidence from Mr. Baldwin are admissible to demonstrate that he knew that pointing a gun at a crew member and firing it is dangerous for several reasons. First, he is aware that dummy rounds look exactly like live rounds so there is always a chance that a young, inexperienced armorer may make a mistake and confuse the two. This is just common sense and is one reason the actor has the *right* to participate in the safety check before handling the gun (a right Mr. Baldwin opted not to exercise). Second, as demonstrated by his statement to detectives on October 21, 2021, he was acutely aware that real guns are dangerous for other reasons and as such should not be pointed at people. Mr. Baldwin made numerous statements

regarding his knowledge that a barrel obstruction coupled with a blank round could be deadly. It is clear from the motions practice and Mr. Baldwin's previous statements that Mr. Baldwin's defense relies heavily on the fact that he had no reason to believe there was a live round in the gun because live rounds should never be present on a movie set. However, "[t]he jury instruction on involuntary manslaughter states that the defendant 'should have known of the danger involved in [his or her] actions,'" and "continued to act." *Id.* (quoting UJI 14-231 NMRA). Mr. Baldwin recounted in detail for detectives on October 21, 2021, that he absolutely knew that real guns on movie sets could be deadly even absent a live round. Mr. Baldwin told detectives,

"And so, we're wondering, was the projectile that went into her some foreign material stuck, and it was an accident, it was a flash round and something came out of a barrel they didn't check?"

"But a half load could shoot a projectile, if something was stuck in the barrel."

"On a flash round, it blows up, that you shoot on camera, quarter, half, full. There is no projectile unless some material is stuck in the barrel of the gun."

"We all said the same thing. 'What was stuck in the barrel? Was something left? They didn't clean the barrel.' Which they always do, always. And was there a rock or something that went through her body? I didn't know about the passing through her body. I know she was hit. I didn't know where, and I don't know what to what extent. But we all presumed, as we're sitting outside, bullshitting for the last two hours while this went on, the aftermath, we assumed something was lodged in the barrel, was a projectile that went into her body."

*See* Baldwin statement to Hancock on October 21, 2021.

This evidence is clearly relevant to what Mr. Baldwin *knew or should have known* and is also stark evidence relevant to New Mexico law regarding the crime charged. "Involuntary manslaughter is an unintentional killing, *State v. Henley*, 2010–NMSC–039, ¶ 14, 148 N.M. 359, that consists of an "unlawful killing of a human being without malice ... committed in the

commission of an unlawful act not amounting to felony, or in the commission of a lawful act which might produce death in an unlawful manner or without due caution and circumspection.” NMSA 1978 § 30–2–3; *State v. Henley*, 2010–NMSC–039, ¶ 14, 148 N.M. 359. (internal quotation marks and citations omitted).

The “lawful act” portion of the involuntary manslaughter statute includes “[t]he statutory phrase ‘without due caution and circumspection’ [which] involves the concept of ‘criminal negligence.’ Criminal negligence includes conduct which is reckless, wanton, or willful.” *State v. Yarborough*, 1995-NMCA-116, ¶ 20, 120 N.M. 669 (*quoting State v. Arias*, 115 N.M. 93, 96, 847 P.2d 327, 330 (Ct.App.1993) (citation omitted)). Accordingly, the State must present evidence of criminal negligence, irrespective of the underlying statutory basis for the charge. *State v. Yarborough*, 1995-NMCA-116, ¶ 20, 120 N.M. 669; *State v. Salazar*, 1997–NMSC–044, ¶ 54, 123 N.M. 778, 945 P.2d 996 (“[I]nvoluntary manslaughter, whether premised upon a lawful or unlawful act, requires a showing of criminal negligence.”).

Criminal negligence exists where the defendant “act[s] with willful disregard of the rights or safety of others and in a manner which endanger[s] any person or property.” *State v. Henley*, 2010–NMSC–039, ¶ 16, 148 N.M. 359, 237 P.3d 103 (internal quotation marks and citation omitted); *State v. Skippings*, 2011-NMSC-021, ¶ 18, 150 N.M. 216. Criminal negligence includes conduct which is reckless, wanton, or willful. *State v. Arias*, 1993-NMCA-007, ¶8, 115 N.M. 93 (citation omitted); *overruled on other grounds by State v. Abeyta*, 1995-NMCA-051, 120 N.M. 233.

During his interview with Corporal Hancock Mr. Baldwin acknowledged that he behaved recklessly. There can be no doubt that he pointed his real prop gun at two members of the crew

contrary to long-established safety protocols and knew that such conduct could be deadly even absent the presence of a live round.

The State agrees not to elicit testimony about the circumstances of the tragedy on the set of *The Crow* but reserves the right to present evidence that Mr. Baldwin knew that real guns on movie sets could be deadly for reasons other than the presence of a live round.

Wherefore, for the foregoing reasons, the State respectfully requests this Court deny, in part, the defendant's motion *in limine* to preclude improper argument, evidence and testimony related to the incident from *The Crow* in accordance with the arguments and law cited above.

Respectfully Submitted,

/s/ Kari T. Morrissey

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I hereby certify that a true and accurate copy of the foregoing was provided to counsel for the defendant via e-mail this 29th day of June 2024.

/s/ Kari T. Morrissey

Kari T. Morrissey