

**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*
No. 5 TO PRECLUDE IMPROPER OPINION
AND TESTIMONY FROM PAUL JORDAN**

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 opinion and testimony from Paul Jordan, and in support thereof submits the following.

INTRODUCTION

As this Court is well aware, Mr. Baldwin shot and killed Ms. Hutchins on October 21, 2021 during the filming of *Rust* in New Mexico. In April/May 2023 the filming of *Rust* continued in Montana and the movie was ultimately completed. When the filming continued in Montana the labor unions within the film industry required the production company (of which Mr. Baldwin was still a producer) to hire film set safety consultants given the flagrant disregard for safety that occurred on the set in New Mexico resulting in the death of Ms. Hutchins. The safety consultants were required to be on set every day and were tasked with making safety recommendations to the production company. The safety consultants who were hired for the

filming of *Rust* in Montana were Paul Jordan and Gary Jensen of *Tenet Production Safety*. Stunningly, Alec Baldwin actively fought the safety recommendations of Mr. Jordan and Mr. Jensen and insisted the safety recommendations set forth by the consultants not be followed. This subsequent bad act is set forth on the State's 404(B) Notice.

The State seeks to introduce evidence from Mr. Jordan of Mr. Baldwin's continuing desire to run afoul of safety requirements designed to ensure the safety of the cast and crew even after he killed Halyna Hutchins. The State asserts that this testimony is permissible as a subsequent bad act pursuant to 11-404(B).

The State agrees that Mr. Jordan has no knowledge of what took place on the set of *Rust* in New Mexico. However, Mr. Baldwin's conduct in Montana more than a year after the filming of *Rust* in New Mexico is relevant and admissible.

The testimony of Mr. Jordan with regard to Mr. Baldwin's conduct in Montana is admissible as it is evidence of his ongoing willful and wanton conduct (the mens rea required for the crime of involuntary manslaughter) even when safety consultants are instructing him how to behave safely. The testimony of Mr. Jordan is also admissible as it is relevant to absence of mistake and lack of accident.

ARGUMENT

Under New Mexico law, 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-NMSC-051, 120 N.M. 233. In proving criminal negligence, the State will present evidence of the defendant’s reckless, wanton and willful conduct. Defendant’s acts on the Rust set in Montana form part of that willful and reckless conduct.

Rule 11-404(B)(1) states that evidence of another crime, wrong or act "is not admissible to prove a person's character" to show that "the person acted in accordance with the character." But under Rule 11-404(B)(2) NMRA 2024, evidence of another crime, wrong or act may be admitted to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Thus, "evidence of other acts is admissible

under Rule 11-404(B) if relevant to a material issue other than the Defendant's character or propensity to commit a crime." *State v. Kerby*, 2007-NMSC-014, ¶ 25, 141 N.M. 413; *see also State v. McGhee*, 1985-NMSC-047, ¶¶ 24-26, 703 P.2d 877, 881 (holding that evidence of prior bad acts is admissible "if it is probative of a material element at issue"); *State v. Niewiadowski*, 1995-NMCA-083, ¶ 10-14, 901 P.2d 779 (holding that "evidence of Defendant's other bad acts can be admissible if it bears on a matter in issue, such as intent, in a way that does not merely show propensity").

It is well-settled that evidence offered pursuant to 11-404(B) is not limited to acts committed prior to the offense charged but may also be admissible for conduct that occurs subsequent to the offense charged. "It is settled in the Tenth Circuit that evidence of 'other crimes, wrongs, or acts' may arise from conduct that occurs *after* the charged offense." *United States v. Mares*, 441 F.3d 1152, 1157 (10th Cir. 2006); *see also United States v. Olivo*, 80 F.3d 1466, 1469 (10th Cir. 1996) ("Regardless of whether 404(b) evidence is of a prior or subsequent act, its admissibility involves a case-specific inquiry that is within the district court's broad discretion.") (citation omitted); *United States v. Zamora*, 222 F.3d 756, 762 (10th Cir. 2000)). Moreover, the length of time between the charged conduct and the subsequent act is not dispositive of whether testimony regarding the conduct is admissible. *See United States v. Bonnett*, 877 F.2d 1450, 1461 (10th Cir. 1989) (reviewing the admission of subsequent bad acts and explaining that "the closeness in time and the similarity in conduct [are] matters left to the trial court, and [its] decision will not be reversed absent a showing of abuse of discretion"). *See also United States v. Olivo*, 80 F.3d 1466, 1469, 1996 U.S. App. LEXIS 6259, 3, (1996) (the Court upheld the admission of subsequent bad acts more than one year after offense charged). *See also, United States v. Reynoso*, 398 F. Supp.3d. 1115 (2019) (the

Court upheld the admission of subsequent bad acts nine months after the date of the offense charged. *See also United States v. Mares*, 441 F.3d 1152 (2006) (the Court upheld the admission of subsequent bad acts one year after the date of the offense charged).

Wherefore, for the foregoing reasons the State respectfully requests this Court deny the defendant's motion in limine to preclude improper opinion and testimony from Paul Jordan.

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