

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

STATE OF NEW MEXICO,

Plaintiff,

v.

D-101-CR-2023-00040

HANNAH GUTIERREZ-REED,

Defendant.

**RESPONSE TO STATE’S MOTION IN LIMINE TO PROHIBIT
USE OR TESTIMONY OF OSHB FINDINGS AND REPORT**

Defendant Hannah Gutierrez-Reed, by and through her counsel of record, Jason Bowles of Bowles Law Firm, and Todd J. Bullion of Bullion Law Office, hereby responds to the State’s Motion in Limine to Prohibit Use or Testimony of OSHB Findings and Report, and responds as follows:

The State desires to attack Ms. Gutierrez Reed and single her out as the only individual responsible for what the state deems was recklessness on the Rust set, and then attribute that as the cause of the death of Halyna Hutchins. Involuntary manslaughter, of course, requires a certain criminal mental state, beyond mere negligence. *See State v. Gonzalez*, 2005-NMCA-031, para. 10 (“A crime generally consists of two elements, a physical, wrongful deed (the ‘actus reus’) and a guilty mind that produces the act (the ‘mens rea’).” The mens rea required for involuntary manslaughter is criminal negligence. *See State v. Yarborough*, 1996-NMSC-068, para. 20. Criminal negligence exists where the defendant “acts with willful disregard of the rights or safety of others and in a manner which endangers any person or property.” *State v. Skippings*, 2011-NMSC-021, para. 18. The State, through using an illegal download of attorney-client privileged

materials, is seeking to show that Ms. Gutierrez Reed brought the live rounds to set, and that she was generally reckless, and to portray this to the jury. As part of this, the State has also charged Ms. Gutierrez Reed with the trafficking charge and two alternative counts of manslaughter under separate theories.

Yet, the OSHA administration performed a very comprehensive investigation into the rust set and determined that production had numerous safety issues on set, and created an atmosphere of safety failures that ultimately caused any issues that occurred. OSHA interviewed over 100 witnesses and in its duty as a public agency, issued a report noting several serious safety violations by production. It was under this atmosphere and through production's safety failures that any issues occurred on set, and Ms. Gutierrez Reed is entitled to bring this forward, in rebuttal to the State's attacks.

The State seeks to preclude the jury from hearing this evidence and to present a false picture to the jury that all the safety failures were the result of the actions of Ms. Gutierrez Reed, as opposed to what happened, which involved productions' numerous safety issues. This is not only fundamentally unfair to the defense, but it also paints a false picture to the jury and distorts the true facts of the case. Ms. Gutierrez Reed is entitled to defend herself against allegations of recklessness and safety failure by highlighting that another state agency cleared her of safety failures and indicated the fault was that of production.

Ms. Gutierrez Reed has retained experts on firearms and operation of movie sets. The experts intend to rely in part in their opinions on the findings by OSHA. Ms. Gutierrez Reed is not intending on introducing the OSHA report itself at this time unless it becomes relevant through the State's presentation at trial, although it could be authenticated as a public record, and authenticated by its author who is a listed witness. Nonetheless, Ms. Gutierrez Reed intends on asking her experts

questions regarding their opinions and incorporating some of OSHA's findings. An expert is entitled to rely upon hearsay as part of their opinion and certainly they can be cross examined as to their opinions and source thereof. This information is highly probative to Ms. Gutierrez Reed's defense and necessary to her defense and to prevent unfairness and untruthfulness in creating the record before the jury. There is no prejudice as the State's own environmental department created the report, through its OSHA division. The jury of course will be given the standard instruction on experts and its ability to accept or reject their opinions. There is nothing prejudicial about this normal and customary process in using an expert on the defense side. Essentially, what the State is saying is that anything that might tend to help Ms. Gutierrez Reed rebut the allegations and exonerate her, is too prejudicial for the jury to hear, presumably, because it completely undercuts the State's case. This motion in limine should be denied.

Respectfully submitted,

/s/ Jason Bowles

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was sent through the ESF system, which caused the following parties to be served by electronic means, as reflected on the Notice of Electronic Filing this 24th day of January, 2024, to the counsel listed below:

Kari Morrisey, Special Prosecutors
Jason Lewis, Special Prosecutors

/s/ Jason Bowles
Jason Bowles
Bowles Law Firm



SUMMARY OF INVESTIGATION

INSPECTION

1. On October 22, 2021, the Occupational Health and Safety Bureau (OHSB), a bureau within the New Mexico Environment Department (NMED), initiated an inspection of Rust Productions, LLC (Rust), at Bonanza Creek Ranch in Santa Fe County, New Mexico in response to a workplace fatality that occurred at approximately 1:47 PM on October 21, 2021. The New Mexico Film Office, which is part of the Economic Development Department (EDD), initially notified OHSB of the incident on the evening of October 21, 2021. OHSB was notified of a firearm-related incident occurring that injured two employees, with one succumbing to their injuries. OHSB assigned the inspection to Compliance Officer (CO) Lorenzo Montoya. The decedent was Halyna Hutchins, Rust Cinematographer. The second injured employee was Joel Souza, Rust Director.

2. Bonanza Creek Ranch, located in Santa Fe County, New Mexico, hosts locations utilized by movie and television productions for over 70 years, including an entire "Old West Town" with a saloon, jail, chapel, and other Western staples. The firearm incident occurred within the chapel at the southwestern edge of Old West Town.

3. On Friday, October 22, 2021, at approximately 12:30 p.m., I attempted to inspect the site, Bonanza Creek Ranch. When I arrived at the site, the three security guards present attempted to contact a representative of Rust by phone to confirm I would be allowed on site. The Company representative informed me that I would be allowed entry, but not be allowed to take pictures or conduct interviews until a warrant was acquired. After being denied the ability to inspect the site by the Sheriff's Office and the Company, I left.

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4. On October 24, 2021, following the Sheriff's Office releasing the site, Rust granted NMED access to inspect the site without a warrant.

5. On Monday, October 25, 2021, I conducted an opening conference and walkaround of the worksite, including the chapel. In attendance from NMED were CO Montoya, Compliance Supervisor Melissa Romero, and Assistant General Counsel Mia Napolitano. Representing Rust was Denise Stevens and Gabrielle Pickle, Line Producer. Also present was Jessica Hoffman, Field Representative of the International Alliance of Theatrical Stage Employees (IATSE) union. As a "Low Budget Contract" film, not all employees were union members, however, all employees were covered by a collective bargaining agreement with IATSE.

6. Following the walkaround on October 25, 2021, OHSB held the first closing conference outside the chapel with Gabrielle Pickle and Denise Stevens. I informed Rust representatives that OHSB would follow up to schedule employee interviews.

7. On March 18, 2022, I conducted a second closing conference with Ryan Smith, Producer, and Rust's legal representatives from Pillsbury Law including Derek Mayor, Tom Van Wyngarden, and Aaron Dyer. During the discussion, I explained that a citation related to safety practices on the use of firearms may be issued, and that abatement for such a citation would require an effective firearms safety program, which could include implementing and building upon the Industry Wide Labor-Management Safety Committee's "Safety Bulletin #1, Recommendations for Safety with Firearms and Use of Blank Ammunition".

FINDINGS

8. The firearm involved in the accident is a modern replica of a Colt .45 caliber revolver, "Long Colt" in style. Rust had 13 such revolvers for the production in total, from manufacturers Piette, Uberti, and Cimarron. In film, firearms are typically controlled by the "Props Department," with the individual



responsible for handling firearms and ammunition titled “Armorer” or “Weapons Handler.” The Armorer for this film was Hannah Gutierrez-Reed, and her immediate supervisor was Sarah Zachary, Props Master (or Property Master). Nicole Montoya, Props Assistant, provided support to Zachary and Gutierrez-Reed. The Rust Props Department was small, and for administrative purposes was placed under the “Art Department” headed by Bryan Norvelle, who provided support for Props but rarely worked with Zachary or Gutierrez-Reed.

9. Ryan Smith, Producer, was identified as overseeing the overall production. A management representative for Rust was Gabrielle Pickle, Line Producer, who directly hired individuals and crews, approved hours worked, and had authority to counsel or discipline employees in any department. Her immediate subordinate was Katherine “Row” Walters, Unit Production Manager, who shared similar authority. Also on the management team was Dave Halls, 1st Assistant Director and Safety Coordinator, who was the set manager and responsible for general workplace safety, who was peer in authority to Gabrielle Pickle and Row Walters.

10. Alec Baldwin, Actor and Producer, and Joel Souza, Director, negotiated with various producers to help create and fund the Rust project. Alec Baldwin’s authority on the set included approving script changes and actor candidates. Alec Baldwin handled the revolver and fired the round that struck and injured Halyna Hutchins and Joel Souza.

11. Hannah Gutierrez-Reed reported to Sarah Zachary for direction on daily tasks; Sarah Zachary reported to Bryan Norvelle; Bryan Norvelle reported to Row Walters; and Row Walters reported to Gabrielle Pickle. Due to the nature of her position as the sole Armorer for Rust, Hannah Gutierrez-Reed regularly corresponded with Gabrielle Pickle directly via text messages and emails. Hannah Gutierrez-Reed performed armorer duties such as demonstrating that a firearm was “cold” or “hot,” with Dave Halls. Dave Halls was also responsible for identifying and correcting hazardous conditions related to firearms safety.

12. As Armorer, Hannah Gutierrez-Reed was responsible for storage, maintenance, and handling of firearms and ammunition on set, and for training members of the cast who would be handling firearms. In

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accordance with Rust safety procedures and industry-recognized safety practice, the Armorer is required to be present whenever firearms are being handled and should have the authority to determine whether an individual requires additional safety training. However, Rust also required Hannah Gutierrez-Reed to perform the role of Props Assistant to Sarah Zachary when firearms were not in active use. In an email conversation that occurred on October 10, 2021, Gabrielle Pickle informed Hannah Gutierrez-Reed that she was allowed 8 paid days at the Armorer's rate in her contract to perform Armorer tasks, and the rest of her time was to be spent as a Props Assistant.

13. Rust ordered ammunition, with the intent to receive blank and dummy rounds, from PDQ Arm & Props, located in Albuquerque, New Mexico. The Property Master stated that Rust did not intend to have live rounds on the set. Live rounds may be distinguishable from dummy rounds by either a small hole in the brass cartridge (indicating that there is no powder), by a missing or dimpled primer at the bottom of the cartridge, or by shaking the round and hearing the distinct clatter of a BB within. Unless a round is removed from a storage box or firearm and inspected, it can't be verified as a dummy round.

14. On October 14, 2021, Gabriel Pickle emailed Hannah Gutierrez-Reed addressing Armorer and Key Assistant Props duties and stating, "...it has been brought to my attention that you are focusing far more on Armor and not supporting props as needed." In the same email, Ms. Pickle informed Ms. Gutierrez-Reed that the "Production and AD team have seen twice that there was a shotgun left unattended after a scene." Ms. Pickle went on to state that she needed "...some type of check in / out system put in place immediately." Ms. Gutierrez-Reed responded by email the same day stating that the Armorer job was "...a very serious job and since we've started I've had a lot of days where my job should only be to focus on the guns and everyone's safety." Ms. Gutierrez-Reed later in the same email stated, "there are working guns on set every day and those are ultimately going to be a priority because when they are not that's when dangerous mistakes can happen."

15. On October 16, 2021, there were two firearms misfires on the Rust set. In the first instance, Sarah Zachary inadvertently fired a blank round as she finished loading a .45 caliber revolver that was aimed at the ground. To return the hammer to the closed position and make the firearm safe, the operator must

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hold the hammer and depress the trigger, guiding the hammer to the closed position deliberately. In the case of the first misfire, the hammer slipped from Ms. Zachary's thumb or fingers, likely resulting in the firing pin on the hammer striking the primer which ignited the powder, firing the blank round.

16. The second misfire on October 16, 2021, involved Blake Teixeira, Stunt Double for Alec Baldwin, and a lever action rifle of unknown make and model. It is not known how the misfire happened, as according to some statements he was alone in "the cabin", and others state he was not alone. Hannah Gutierrez-Reed stated that Blake Teixeira's only comment was "it just went off." Hannah Gutierrez-Reed described that it is probable the rifle fired by being placed onto the ground too roughly.

17. On October 17, 2021, Hanna Gutierrez-Reed sent a text message to Gabrielle Pickle stating, "Hey, we're on day 8 of Armor days. So if there's gunfire after this you may want to talk to the producers." Ms. Pickle replied the same day that there would be "No more trading (sic) days." Ms. Gutierrez-Reed then asked to clarify, "Training days?" Ms. Pickle responded, "Like training Alec and such."

18. On October 20, 2021, Lane Luper, 1st Assistant Camera, resigned citing safety concerns among other issues and stated in an email to Row Walters, "During the filming of gunfights on this job things are often played very fast and loose. So far, there have been 2 accidental weapons discharges and 1 accidental SFX explosive that have gone off around the crew between takes." Mr. Luper went on to state, "To be clear there are NO safety meetings these days. There have been NO explanations as to what to expect for these shots."

19. On October 21, 2021, Dave Halls handed the 0.45 caliber Colt revolver, loaded with what he assumed were dummy rounds, to Alec Baldwin. Mr. Baldwin aimed the revolver toward Halyna Hutchins and Joel Souza and a projectile was fired, striking Ms. Hutchins and Mr. Souza.



CONCLUSIONS

20. As a result of the inspection, OHSB determined that Rust was responsible for a serious violation of the New Mexico Occupational Health and Safety Act (“the Act”). While no specific state or federal OSHA standards exist for firearms used in the film industry, it is clear both the employer and the film industry recognized the hazard associated with the use of firearms on movie sets, and the potential for serious injury to employees. Further, Rust demonstrated plain indifference to the safety of employees by ignoring recognized hazards inherent to the use of firearms and ammunition by failing to take appropriate corrective or investigative actions after two firearms-related incidents (misfires) occurred on October 16, 2021, and after employee(s) notified management that they did not feel safe with how weapons were being handled on set. Rust failed to follow company safety procedures, which likely would have prevented the accident from occurring.

21. Rust management did not ensure their own safety procedures, taken from film industry “safety bulletins” issued by the Industry Wide Labor-Management Safety Committee, were followed at the worksite. According to the “General Safe Practices” document provided by Rust, “...the following safety bulletins were taken into consideration during the course of production: ‘Recommendations for Safety with Firearms and Use of ‘Blank Ammunition.’” Additionally, on January 7, 2022, Rust’s attorneys informed NMED that the Safety Bulletins used on set included “Recommendations for Safety with Firearms and Use of ‘Blank Ammunition.’” Rust’s use of procedures from Safety Bulletin #1, Recommendations for Safety with Firearms and Use of Blank Ammunition (Bulletin #1), and Rust’s failures to effectively implement those procedures, included the following:

- a. Bulletin #1: Page 1, The Property Master or Armorer will “*work in conjunction with the production’s designated Safety Representative to assure that the following standards are adhered to.*”



Failure to Implement: The standards listed in Bulletin #1 were not enforced by Rust managers and/or supervisors including but not limited to Sarah Zachary, the Property Master, and Dave Halls, the Safety Coordinator.

- b. Bulletin #1: Page 1, *“Live ammunition is never to be used nor brought onto any studio lot or stage.”*

Failure to Implement: Rust did not develop a process to ensure live rounds were not brought onto set, including failing to afford the Armorer time to thoroughly inventory ammunition.

- c. Bulletin #1: Page 1, *“Before any use of a firearm in a rehearsal and/or on-camera sequence or off-camera use, all persons involved must be thoroughly briefed at an on-site SAFETY MEETING where the firearms will be used. This meeting shall include an “on-site walk through” and/or “dry-run” with the Property Master (or ...), designated production representative, and anyone that will be using and/or handling a firearm.”*

Failure to Implement: Employees stated that while safety meetings took place, they were not conducted each day firearms were used on set, and often any mention about firearms was brief and not specific.

- d. Bulletin #1: Page 1, *“No one shall be issued a firearm until he or she is trained in safe handling, safe use, the safety lock, and proper firing procedures. If there are any questions as to the competency of the person who will use the firearm, the Property Master (or...) shall determine if additional training is required;”* and Page 3, *“9. Ensuring that a sufficient amount of time has been allotted for training and rehearsal.”*

Failure to Implement: Gabrielle Pickle instructed Hannah Gutierrez-Reed on October 17, 2021, that “no more trading(sic) days” would take place, “Like training Alec and such.” Rust management did not provide the Armorer (or Property Master) with the authority to determine if additional training was required, in violation of Rust safety procedures.



- e. Bulletin #1: Page 1, *“Additionally, this Bulletin should be attached to the call-sheet- each day firearms will be used.”*

Failure to Implement: During OHSB’s interview of Dave Halls, he referred to the safety bulletins, “...between the unions, between the Screen Actors Guild and IATSE, which represents the technicians, and the Directors Guild of America, there ... are what we call safety memos, you know, that -- that describe the protocols.” When asked if the safety memos were always attached to the call sheets, Halls responded, “No. They were not on our call sheets.”

- f. Bulletin #1: Page 2, *“7. Never lay down a firearm or leave it unattended. Unless actively filming or rehearsing, all firearms should be safely secured.”*

Failure to Implement: After instructing Hannah Gutierrez-Reed to focus more on her Props Assistant duties and less on Armorer responsibilities, Gabrielle Pickle then informed Hannah Gutierrez-Reed that “Production and AD team have seen twice there was a shotgun left unattended after a scene... We need all weapons to be in your control any time they are used.” Hannah Gutierrez-Reed explained conducting her Armorer duties and Props Assistant duties created a gap wherein actors or stuntmen put down a firearm and step away, leaving it unattended. Hannah informed Gabrielle that “It would slow production down terribly if we had to check them back in between scenes...” and “When I’m forced to do both, that’s when mistakes get made like the shotgun being unattended.” Gabrielle Pickle instructed Hannah Gutierrez-Reed to develop a check in/out system for weapons but did not follow-up to ensure weapons were secured and ignored Hannah Gutierrez Reed’s concerns about not being provided adequate time to perform Armorer duties.

- g. Bulletin #1: Page 2, *“1. Refrain from pointing a firearm at anyone... If it is absolutely necessary to do so on camera, consult the Property Master / or Armorer or other safety representative, such as the First A.D. / Stage Manager. Remember that any object at which you point a firearm could be destroyed.”*



Failure to implement: Lane Luper stated that many camera shots had the firearms pointed and firing at the camera. Halyna Hutchins and Joel Souza were injured when a firearm was pointed in their direction, with Hutchins' injury resulting in death. Rust management representative Dave Halls was present prior to and at the time the firearm discharged a live round, severely injuring two crew members. As Rust's top-level management safety official, Mr. Halls did not consult with the Property Master or Armorer during or after the firearm was loaded, handed to the actor, and pointed toward crew members in order to determine that pointing the firearm at persons was "absolutely necessary."

- h. Bulletin #1: Page 2, "*11...firearms are to be loaded just before they are used in a scene.*"

Failure to Implement: On the day Halyna Hutchins and Joel Souza were shot, the firearm was loaded and handed to Alec Baldwin during an informal rehearsal and prior to filming the scene involving the firearm.

22. Rust did not provide staff responsible for ensuring firearms safety with sufficient time to inspect ammunition received to ensure that no live rounds were present.

23. The first misfire, which occurred on October 16, 2021, presented a hazard to Sarah Zachary and any employees nearby. Rust failed to address the hazardous condition and reinforce adherence with their own protocols to protect workers.

24. Rust management, including Gabrielle Pickle and Row Walters, ignored concerns of firearm misfires on set according to statements taken by OHSB. Dave Halls, the Safety Coordinator, was present on set when the first accidental discharge occurred; Mr. Halls did not discuss the incident with staff, report the incident to Rust producers, review the incident as Safety Coordinator, ensure Sarah Zachary took appropriate actions with respect to safety protocols, or take any other corrective measures. According to employees interviewed, including Hannah Gutierrez-Reed, crew members verbally expressed their surprise and discomfort with Rust management's lack of action regarding the worksite safety issue.

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25. Rust initiated no investigative action for the second firearm misfire on October 16, 2021, beyond Hannah Gutierrez-Reed asking Blake Teixeira how it happened. Dave Halls was present during the incident and did not speak with either Hannah Gutierrez-Reed or Blake Teixeira. Lane Luper, 1st Assistant Camera, texted Row Walters informing her, "We've now had 3 accidental discharges. This is super unsafe." The third discharge involved a Special Effects "popper," which is a small explosive that simulates a bullet impact on a surface. Row Walters responded, "Accidental discharge on the firearms?" Luper responded, "Yeah 2 discharges today and 1 on week 1." Row Walters did not ask any additional questions to try to understand what had occurred. Despite being informed of the misfires, and that at least one employee expressed not feeling safe, Rust management took no corrective action.

26. Rust recognized the hazards associated with firearms and adopted safety bulletins that were designed to control and mitigate these hazards. Rust described these protocols as being enforced by the 1st Assistant Director, who is the Safety Coordinator. Ryan Smith, Producer, also stated during the Closing Conference that all members of cast and crew have stop-work authority. Despite this, no corrective, investigative, or disciplinary action was taken after the first and second firearms misfires by any member of management. Dave Halls, 1st Assistant Director and Safety Coordinator, was physically present and witnessed these misfires, and chose not to take any corrective, investigative, or disciplinary action. When the Unit Production Manager, Row Walters, was informed by the Props Master and the 1st Assistant Camera that weapons misfires had occurred, Walters did not initiate any corrective, investigative or disciplinary action in accordance with Rust's safety procedures.

27. When the 1st Assistant Camera resigned, informing management that there was an ongoing lack of firearms safe practices (among other labor issues) and that misfires had occurred, Rust management took no action to review or address worker safety concerns. When the Armorer had used most of their contractually limited "Armorer Days," they were issued a written instruction to focus less on their Armorer tasks and spend more time assisting the Props Department. When the Armorer expressed a need to ensure actors be able to safely handle a firearm with a holster, they were told by the Line Producer that the



Armorer would be informed if that was necessary. When the Armorer was scheduled to train the stunt crew on firearms safety, she was told that the Stunt Coordinator would handle that instead.

28. The Employer, Rust Movie Productions, LLC, demonstrated plain indifference to the hazards associated with firearms by routinely failing to practice their own safety protocols, failing to enforce adherence to safety protocols, and failing to ensure that the handling of deadly weapons was afforded the time and effort needed to keep the cast and crew safe. Additionally, the Employer disregarded or otherwise did not follow-up, ask questions, or try to understand what happened when employees notified management about the misfire incidents and not feeling safe on set. The Safety Coordinator was present on set and took no direct action to address safety concerns. Management was provided multiple opportunities to take corrective actions and chose not to do so. As a result of these failures, Director Joel Souza and Cinematographer Halyna Hutchins were severely injured. Halyna Hutchins succumbed to her injuries on October 21, 2021.

RECOMMENDATIONS

29. Based on the above findings, I recommend a Willful-Serious citation with penalties be issued to Rust Movie Productions, LLC, citing the plain indifference to the recognized hazards associated with the use of firearms on set, to which their employees were exposed.