

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 MOTION TO DISMISS THE INDICTMENT COMBINED
EXHIBIT SET 4 OF 10

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EXHIBIT 7

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

STATE OF NEW MEXICO,

Plaintiff,

v.

D-0101-GJ 2023-00008

ALEXANDER RAE BALDWIN,

Defendant.

**STATE’S EXPEDITED MOTION TO PRECLUDE TARGET’S REQUESTED
TESTIMONY AND EVIDENCE BEFORE THE GRAND JURY**

COMES NOW the State of New Mexico, by and through Special Prosecutors Kari T. Morrissey and Jason J. Lewis, and respectfully requests that the Court exclude or limit the testimony and evidence proposed by the target for presentation to the grand jury as not lawful, competent and relevant, and not directly exculpatory for the purposes of grand jury presentation. N.M.S.A. 1978, §31-6-11(B), N.M.R. CRIM. P. DIST. CT. 5-302.2.

On November 14, 2023, pursuant to N.M.S.A. 1978, §31-6-11, N.M.R. CRIM. P. DIST. CT. 5-302.2, and *Jones v. Murdoch*, 2009- NMSC-002, 145 N.M. 473, the State received the target’s cover letter and grand jury evidence alert letter. State’s Exhibits 1 and 2. The State has completed its review of the target’s cover and alert letters and provides the following response:

PART I: ELEMENTS

A. Criminal Negligence Instruction

The target is requesting the grand jurors “be alerted to the fact that the criminal negligence standard requires the prosecution to show that Mr. Baldwin had subjective knowledge

of an actual risk that the firearm placed in his hand had been loaded with live ammunition.” This is an incorrect instruction for at least two reasons.

First, there is more than one way to show that an individual acted with criminal negligence resulting in a charge of involuntary manslaughter. N.M.S.A. 1978, 30-2-3(B), provides, “Involuntary manslaughter consists of manslaughter 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.” The State can support a criminal charge of involuntary manslaughter, as identified in the target notice, under the theory that the target committed the offense of negligent use of a firearm (an unlawful act not amounting to a felony) and that act resulted in the death of Halyna Hutchins. None of this requires the grand jury to also find that the target had subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition. Moreover, if the target had subjective knowledge the gun handed to him was loaded with live ammunition, he could be and would be charged with much more serious crimes, including first and second degree murder, or voluntary manslaughter. The target is asking the Court to impose an unlawfully high standard of proof for a charge of involuntary manslaughter, and that the Court impose an additional element not required by the statute.

Second, the only items to be submitted to the grand jury pertaining to this charge are the applicable Uniform Jury Instruction (UJI) and any definitions required by the UJI. The State is not required to disclose to the target what its proposed theory of the case is nor provide the target with an advance copy of the UJI and applicable definitions.

B. Proximate Cause Instruction

The State will agree to alert the grand jury to the proximate cause instruction.

PART II: WITNESSES

As an initial matter, it is well established that it is within the purview of the prosecutor to “present specific evidence before a grand jury in a particular manner...and that the [target] does not have a clear legal right to have the grand jury investigation proceed in the same manner as a criminal trial with the full panoply of due process rights.” *Matter of Grand Jury Sandoval Cty.*, 1988-NMCA-007, ¶ 18, 106 N.M. 764, 768, 750 P.2d 464, 468. In this vein, the target is permitted to propose only that testimony and evidence that is directly exculpatory; circumstantial exculpatory evidence is not permitted. The State is required to present to the grand jury only exculpatory evidence that directly negates defendant's guilt. *See State v. Lara*, 110 N.M. 507, 1990-NMCA-075. “Direct evidence is evidence that, if believed, proves the existence of facts without inference or presumption.” *Id.* at 516, ¶ 32. As noted below, the vast majority of the target’s proposed testimony and exhibits are not directly exculpatory and are therefore not required to be presented to the grand jury.

Witness No. 1: Joel Souza

Question 1: Mr. Souza’s role on the set of *Rust* as director and what that role entailed are irrelevant to the grand jury inquiry, and these questions will not elicit directly exculpatory evidence.

Questions 2-4: Whether Mr. Souza is aware whether anyone raised concerns about Mr. Baldwin’s attitude toward safety on set in *Rust* or any other movie is irrelevant to the grand jury’s inquiry. Similarly, whether Mr. Souza had concerns about Mr. Baldwin’s attitude toward safety on the set of *Rust* is not relevant and is not directly exculpatory.

Questions 5 and 6: The fact that *Rust* is a Western genre film, and the filming included the use of real firearms will be presented to the grand jury through other witnesses. It is unclear

whether the script called for real firearms to be used as props as opposed to inert prop guns similar to the type that were used when Rust resumed filming in Montana.

Question 7-9: Whether other scenes filmed in the movie called for guns to be pointed at actors is irrelevant and not directly exculpatory.

Question 10-11: The crew members responsible for safety on set and responsible for firearm safety is irrelevant and not directly exculpatory. The actor holding the gun is responsible for safe handling of the gun pursuant to the same safety bulletins the target refers to in his request for grand jury evidence. Moreover, persons handling firearms in New Mexico are subject to the laws of the State of New Mexico regardless of the responsibilities of others around them. The fact that the actor shares the responsibility of firearm safety with another person(s) or crew member(s) is not directly exculpatory. Moreover, question 10 is apparently intended to elicit testimony that David Halls “was responsible for safety on set” when in fact David Halls was the “safety coordinator” and all cast and crew are responsible for conducting themselves in a safe manner.

Questions 12-13: How many times Mr. Souza observed Mr. Baldwin using prop weapons and whether Mr. Souza deemed the use dangerous or negligent is irrelevant and not directly exculpatory. It calls for a legal conclusion as the grand jury will be provided the definition of negligence and there is no evidence that Mr. Souza has sufficient experience with firearms, specifically single action revolvers, to know whether the target was behaving dangerously or negligently.

Question 14: What time Mr. Souza arrived on set is irrelevant to whether Mr. Baldwin’s conduct meets the elements of the offenses presented to the grand jury and is not directly exculpatory.

Questions 15-17: The scene that was being rehearsed prior to the lunch break on October 21, 2021, was recorded and the grand jury will be provided with the video recording. Moreover, witnesses who were in the church during filming before and after lunch will be called to testify before the grand jury and can describe what was being rehearsed, what happened during the scene and whether it involved firearms. Whether the script directed Mr. Baldwin to draw his pistol during the scene is not competent or relevant evidence given that the script was constantly subject to modification by Mr. Baldwin and Mr. Souza and drawing a pistol during a scene does not include pointing the pistol at Ms. Hutchins while cocking the pistol and pulling the trigger.

Question 18: This question will be posed to witnesses present for the incident who will be called to testify before the grand jury.

Question 19: Whether Mr. Souza had concerns about the positioning of the camera or not is irrelevant to the grand jury's inquiry. Presumably, Mr. Souza had no reason to believe Mr. Baldwin was going to pull the trigger of the gun while it was pointed at Ms. Hutchins. The answer to this question is not directly exculpatory.

Questions 20-21: Mr. Souza does not have first-hand knowledge of the subject matter of questions 20-21. He simply cannot answer the questions and in any event, the answers to them are not directly exculpatory.

Questions 22-23: These questions require Mr. Souza (or any witness) to speculate as to what "everyone" assumed or how people "seemed." Moreover, what other people assumed about the gun or whether anyone "seemed uncomfortable" is irrelevant to the grand jury's inquiry, and the responses are not directly exculpatory.

Questions 24 and 25: Mr. Souza did not give Mr. Baldwin any instructions after Mr. Baldwin was in possession of the gun and did not hear any instructions given by Ms. Hutchins to Mr.

Baldwin. Mr. Souza entered the church seconds before the gun was discharged. Mr. Souza could not see the way Mr. Baldwin was handling the gun in front of the camera. Mr. Souza is 5'4 and was standing behind Ms. Hutchins. Moreover, the responses are not directly exculpatory.

Question 26: It is unclear what this question is intended to elicit and whether that information would be relevant, competent or directly exculpatory.

Question 27-30: Whether Mr. Souza recalls being taken to the hospital or giving statements to investigators is irrelevant to the grand jury's inquiry regarding the conduct of Mr. Baldwin. The fact that Ms. Hutchins was shot and killed, and Mr. Souza was shot and survived is testimony that will be provided to the grand jury through other witness's testimony. Whether Mr. Souza recalls Ms. Gutierrez yelling "I'm sorry, I'm sorry, I'm sorry" and whether he had an understanding of why she was yelling that is irrelevant to the grand jury's inquiry concerning the conduct of Mr. Baldwin. Moreover, this evidence and testimony is not directly exculpatory to Mr. Baldwin. The grand jury and Mr. Souza would be asked to speculate as to why Ms. Gutierrez apologized to Mr. Souza.

Question 31: The fact a production company was formed to make the movie Rust will be presented to the grand jury through other witnesses. The specific name of the production company is irrelevant, and the responses are not directly exculpatory.

Question 32: Whether Mr. Souza was hired by the production company is irrelevant to the grand jury's inquiry regarding the conduct of Mr. Baldwin, and the responses are not directly exculpatory.

Question 34: Whether Rust Movie Productions is Alec Baldwin's company or whether he owned any part of the is irrelevant to the grand jury's inquiry as to whether there is probable

cause that Mr. Baldwin committed the offense of involuntary manslaughter, and the responses are not directly exculpatory.

Questions 35: The fact that Mr. Baldwin was hired as an actor and producer on the movie Rust will be presented to the grand jury through other witnesses.

Question 36: The names of other people hired by Rust Productions and their job duties with respect to hiring, budgeting, scheduling, logistics and management is irrelevant to the grand jury's inquiry, and the responses are not directly exculpatory.

Question 37-40: Mr. Souza's knowledge of Mr. Baldwin's authority or responsibilities is irrelevant. Mr. Baldwin's authority as actor and producer is outlined in his contracts and evidenced by his behavior on set and will be discussed by other witnesses called to testify before the grand jury. This testimony will include that Mr. Baldwin received a producer credit for the film pursuant to his producer contract. What Mr. Souza believed the producer credit was intended to reflect is irrelevant to the grand jury's inquiry, and the responses to these questions are not directly exculpatory.

Witness No. 2: David Halls

Questions 1-3: Mr. Halls' general role on the set of Rust as 1st Assistant Director is irrelevant to the grand jury inquiry. The State will present testimony through other witnesses that one of Mr. Halls' responsibilities was to conduct safety briefings, and that on the day of the incident, Mr. Halls handed the target the incident firearm and stated to the target, "Cold gun" or similar language.

Questions 4-5: Mr. Halls' status as a union member and whether the union provides a job description for 1st Assistant Director is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Questions 6-8: Mr. Halls' role as safety coordinator is not directly exculpatory evidence except as provided for in the State's response to Questions 1-3. Moreover, Mr. Halls' role as safety coordinator does not relieve any other member of the cast and crew, including the target, from their own responsibilities to act in a safe manner which comports with applicable safety rules and local and state laws.

Questions 9-11: Mr. Halls' knowledge of Industry Safety Bulletins is irrelevant to the grand jury proceeding and is not directly exculpatory evidence. The State will introduce the Industry Safety Bulletins as exhibits and will discuss their contents through one or more witnesses. The State also intends to have one or more witness testify as to the target's statements regarding the safety bulletins.

Questions 12-14: The Safety Bulletins are self-explanatory and do not require Mr. Halls' interpretation. Mr. Halls' knowledge about whether others should expect there to be live ammunition on set is not competent evidence because he cannot know whether any other person on set would ever have any reason to believe live ammunition is on the set. Further, other people's beliefs concerning live ammunition on set is irrelevant as to what the target knew or should have known and is not directly exculpatory evidence.

Questions 16-18: How Mr. Halls' interpreted or perceived the target's behavior and attitude on set and whether anyone raised issues concerning the target's behavior on set is not directly exculpatory evidence.

Question 19: Mr. Halls cannot testify as to what the target knew concerning live ammunition on set and such testimony is not directly exculpatory evidence.

Questions 20-22: The State intends to introduce the role of the armorer and her chain of command through other witnesses. Such testimony is not directly exculpatory evidence.

Question 23: Mr. Halls' understanding of the difference between a blank and dummy round is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Question 24-25: Mr. Hall's description of the scene being rehearsed leading up to the incident and whether he was inside the church is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Question 26: Whether Mr. Halls asked for the gun to be brought into the church is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Question 27: Whether Mr. Halls asked for the gun to be loaded with dummies is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Question 28: Whether it was necessary for the gun to be loaded with dummies for the rehearsal will be discussed by other witnesses and is not directly exculpatory evidence.

Questions 29-33: The State will call other witnesses to testify to the appropriate process by which dummies are checked and loaded into firearms on movie sets, and what an actor's responsibilities are as part of this process. Mr. Halls' opinion on whether it is customary for actors generally to rely on assurances from the armorer and 1st Assistant Director are irrelevant to whether it was reasonable for the target to have relied on assurances under the facts of this case. Moreover, none of the testimony expected to be elicited by these questions is directly exculpatory.

Questions 34-35: Any assumptions on the part of Mr. Halls or anyone else are irrelevant and not directly exculpatory. Moreover, this question in isolation - that is, without knowing what the steps were prior to the gun being handed to an actor - is not relevant. The relevant inquiry is of

the circumstances under which the target could have assumed the gun was completely safe to handle. These questions will not elicit evidence that is directly exculpatory or relevant.

Question 36: What Mr. Halls heard some unidentified person ask the target to do is not evidence that the target heard the instruction. The target has offered no evidence that Mr. Halls can answer why other people gave particular instructions. The best evidence of what Mr. Baldwin was asked and he knew are the statements he gave to Detective Hancock. Lastly, the answers to these questions are not directly exculpatory evidence.

Question 37: Mr. Halls cannot answer why the target may have pointed the gun at the camera, and the answer to this question is not directly exculpatory evidence.

Question 38: Mr. Halls' belief as to whether the target acted carelessly, negligently, or in violation of industry standards question is not appropriate testimony and is not directly exculpatory evidence.

Questions 39-45: Statements made to the media by Mr. Halls' attorney are not relevant to the grand jury proceedings and are not directly exculpatory evidence.

Questions 46-48: Questions concerning whether Mr. Halls recalls being interviewed by various state agencies and by members of the DA's office with his counsel present are irrelevant and will not elicit directly exculpatory evidence.

Questions 49-51: Questions concerning the plea agreement Mr. Halls entered into are not relevant to the grand jury proceedings. Because Mr. Halls entered into a plea agreement does not preclude the indictment of the target. The grand jury's charge is to determine whether the target's actions were a significant cause of the injury or harm, irrespective of whether there were other

individuals whose actions were also a significant cause of the injury or harm. *See* UJI 14-134 NMRA.

Question 52: The State is unaware of the “plea interview” to which the target is referring.

Regardless, Mr. Halls’ *feelings* of whether he was responsible are not relevant. A person’s feelings are not a relevant inquiry into legal responsibility or an individual’s legal culpability.

Moreover, the grand jury’s charge is to determine whether the target’s actions were a significant cause of the injury or harm, irrespective of whether there were other individuals whose actions were also a significant cause of the injury or harm. *See* UJI 14-134 NMRA.

Question 53: Mr. Halls’ statement that he was “the last line of defense” is irrelevant and misleading. The industry safety bulletins and state law place duties and responsibilities on actors, including the target. This statement is not directly exculpatory evidence.

Witness No. 3: Sarah Zachry

Questions 1-5: Ms. Zachry’s role on the film, who hired her, who did all the hiring (assuming she knows who hired other cast/crew members) and Mr. Baldwin’s role in hiring is irrelevant to the grand jury’s inquiry. Ms. Zachry was not in the church at the time of the shooting and did not load the gun that Mr. Baldwin was handling when Ms. Hutchins was killed. The information elicited by these questions would not be directly exculpatory.

Questions 6 and 7: Ms. Zachry’s understating of Mr. Baldwin’s supervision or managing of the various departments on set is irrelevant to the grand jury’s inquiry. Likewise, Ms. Zachry’s knowledge or lack thereof about Mr. Baldwin’s responsibilities for ensuring safety protocols were followed is irrelevant to the grand jury’s inquiry. Moreover, there is no information that Ms. Zachry, the prop master, knew or understood these roles or had reason to know. However, witnesses subpoenaed for the grand jury can testify that Mr. Baldwin’s producer contract states

“Production Company (Rust Movie Productions, LLC) engages lender (El Dorado Pictures, Inc, which is Alec Baldwin’s production company) to cause Artist (Alec Baldwin) to *render those services customarily rendered by a producer in connection with the production of the motion picture tentatively entitled “Rust” (the “Picture”).*” (emphasis added). The contract goes on to add “Lender shall cause Artist to render all pre-production, production, and post-production services reasonably requested by Production Company and *customarily rendered by individual Producers in the motion picture industry.*” (emphasis added).

Questions 8-9: Ms. Zachry’s knowledge of whether Mr. Baldwin was involved in scheduling hours or budgeting or other persons who were involved in those tasks is irrelevant to the issue before the grand jury and is not directly exculpatory.

Question 10: Whether Ms. Zachry ever observed Mr. Baldwin doing anything in relation to the production other than acting is irrelevant and not directly exculpatory. Upon information and belief, Ms. Zachry did notice that Mr. Baldwin controlled more aspects of the filming and management on set than the other cast members who were not also contracted as producers.

Question 11: Witnesses subpoenaed to testify before the grand jury will testify that Hannah Gutierrez was the armorer.

Questions 12-14: Whether it was Ms. Zachry’s job to oversee the armorer, acquire firearms and ammunition for the set and who she shared those responsibilities with is not relevant for the grand jury’s inquiry and not directly exculpatory.

Questions 15-16: Witnesses already subpoenaed for the grand jury proceeding will testify that the gun used in the incident that resulted in Ms. Hutchins death was a .45 Long Colt Caliber Pietta Single Action Army revolver and that the ammunition on set included dummy rounds, blank rounds and six live rounds.

Questions 17-18: Where the firearms and ammunition were acquired is not relevant to the grand jury's inquiry into Mr. Baldwin's negligent handling of the firearm on set by pointing a gun at another person, cocking the gun and pulling the trigger without personal knowledge of what was in the firearm. The origin of the firearms and ammunition is not directly exculpatory to Mr. Baldwin.

Questions 19-28: These questions are irrelevant to the specific inquiry of the grand jury and not intended to elicit directly exculpatory information.

Question 29: Testimony will be elicited from other witnesses concerning the differences between dummy rounds and blank rounds.

Questions 30-31: The question is improper and is not intended to elicit relevant information or directly exculpatory information.

Questions 32-34: How well Ms. Gutierrez performed her job functions in the opinion of Ms. Zachry is not relevant or intended to elicit directly exculpatory evidence. The grand jury will hear testimony from other witnesses that Ms. Gutierrez was the person who loaded the gun that was provided to Mr. Baldwin before the shooting that resulted in the death of Ms. Hutchins.

Questions 35-42: None of the questions requested by the target relate to whether or not Mr. Baldwin behaved negligently once the firearm was in his possession, as such they are irrelevant and not intended to elicit exculpatory information.

Question 43: The grand jury will hear testimony from other witnesses that Hannah Gutierrez was working on the set of Rust on October 21, 2021.

Question 44: The grand jury will hear testimony about the gun Mr. Baldwin was using before lunch. Mr. Baldwin only used one gun and did not use others and the grand jury will not be

presented with testimony about other guns in the possession of other actors as it is irrelevant to the grand jury's inquiry into Mr. Baldwin's conduct and is not directly exculpatory.

Question 45: Where the guns were stored during lunch and whether they were unloaded is not relevant to Mr. Baldwin's conduct when the gun was in his possession. "What about the cart? Was *anything* left of the cart?" (emphasis added) are not proper questions intended to lead to relevant or exculpatory information.

Question 46-48: The targets proposed questions are not intended to lead to relevant or directly exculpatory testimony or evidence.

Question 49: The grand jury will hear testimony that Hannah Gutierrez loaded Mr. Baldwin's gun before and after the lunch break on October 21, 2021.

Question 50: Ms. Zachry was recently interviewed by Ms. Gutierrez's counsel and stated definitively that she did not see Ms. Gutierrez load Mr. Baldwin's gun, therefore this question will not lead to relevant or exculpatory information.

Question 51: Whether there were any rounds left in the gun from before lunch is not relevant and will not lead to directly exculpatory evidence. The follow-up questions are not clear as to who *she* is and should not be asked in their currently form and would unlikely lead to exculpatory evidence even if reworded.

Question 52-53: Ms. Zachry stated that she did not see Ms. Gutierrez load the gun after lunch. These questions will not lead to relevant or exculpatory information.

Question 54: The target's proposed questions are not proper and complete questions and therefore will not lead to relevant and exculpatory information.

Question 55: The target's proposed question is unclear as it does not give a time frame that could lead to relevant information. Moreover, Ms. Zachry has already stated that she did not see

Ms. Gutierrez load the gun after lunch. These questions will not lead to relevant or exculpatory information.

Question 56: The target's proposed question is unclear as it does not give a time frame that could lead to relevant, directly exculpatory information. Moreover, Ms. Zachry was never in the church before or after lunch during filming and could not have seen what happened "after Hannah brought the gun into the church."

Questions 57-60: The target's proposed questions will not lead to relevant or directly exculpatory information.

Question 61: Testimony will be presented to the grand jury by other witnesses that Ms. Zachry checked the box that she believed Ms. Gutierrez was pulling dummy rounds from and discovered other rounds that did not appear or sound to be dummy rounds. Three of these live rounds were later determined to be live rounds.

Question 62-65: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and the information elicited by these questions would not be directly exculpatory.

Question 66: Testimony will be presented by other witnesses about how to distinguish a live round from a dummy round.

Question 67-70: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Question 71-74: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Question 75: How closely Ms. Zachry worked with Mr. Baldwin and whether she ever spoke to him is not relevant to the grand jury's inquiry. On October 13, 2021 Ms. Zachry sent a text message to her then fiancée and described Mr. Baldwin as "a difficult man." Presumably, this is Ms. Zachry's opinion of what Mr. Baldwin was *like* and counsel will present this text message to the grand jury if the target wishes it to be presented but was not intending to present it.

Questions 54-57: These questions are incorrectly numbered and are irrelevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Questions 76: Ms. Zachry's opinion about who is responsible for Ms. Hutchins' death is not relevant to whether there is probable cause to believe that Mr. Baldwin violated New Mexico law. The information elicited by these questions would not be directly exculpatory.

Witness No. 4: Ryan Smith

Questions 1-3: Mr. Smith's role on Rust, his involvement in Rust Movie Productions, LLC, and Rust Movie Productions LLC's ownership is irrelevant to the grand jury inquiry and the responses to these questions are not directly exculpatory evidence.

Question 4: Whether the target was hired by Rust Movie Productions and Mr. Smith's description of "what he was hired to do" is irrelevant to the grand jury proceedings. The target's employment as an actor and producer was reduced to a written contract and the contract speaks for itself. The responses to these questions are not directly exculpatory evidence.

Question 5-6: The State intends to inform the grand jury regarding target's employment contracts via other witnesses. The question of whether the contract limits the target's authority in any way calls for a legal conclusion; the best evidence of what the contract does is the plain language of

the contract. Nothing in the contract, Mr. Smith's interpretation of the contract, or why it was important for the target to be credited as a producer is directly exculpatory evidence.

Question 7: Whether Rust Movie Productions hired cast and crew is irrelevant and is not directly exculpatory evidence.

Question 8: Who at the production company was responsible for hiring crew members is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Question 9: Whether the target was involved in the hiring of cast members is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Question 10: Whether the target could hire cast members on his own without the production company's permission is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Questions 11-14: Whether the target was involved in any of the activities listed in questions 11-14 is irrelevant to the grand jury proceedings and is not directly exculpatory evidence.

Questions 15-17: Whether Mr. Smith ever observed the target on set, whether anyone raised concerns to Mr. Smith regarding target's attitude toward safety on set or regarding the target's general conduct on the set is not directly exculpatory evidence.

Witness No. 5: Det. Alexandria Hancock:

Question 1: Detective Hancock will be asked to describe her role in the investigation.

Questions 2-3. Whether law enforcement separated potential witnesses and whether it is standard practice to do so is not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Questions 4-5: The ammunition in the firearm was already removed by Ms. Gutierrez by the time law enforcement arrived. Given that the ammunition was already removed from the firearm before law enforcement arrived the questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Questions 6-10: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Questions 11 and 12: Detective Hancock will be asked if she interviewed Hannah Gutierrez (the film's armorer) and whether she developed an understanding of the role and responsibilities of an armorer from her interviews with Mr. Gutierrez and other witnesses.

Questions 13-19: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Question 20: The target's proposed question will elicit the same testimony as question 11 and counsel incorporates her response to Questions 11 and 12 hereto.

Questions 21: The target's proposed question is not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Questions 22-32: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin. The actions of Ms. Gutierrez actions that contributed to the death of Ms. Hutchins are not a relevant line of

inquiry for the grand jury tasked with determining probable cause against Mr. Baldwin. The fact that another person shares responsibility for the death of Ms. Hutchins is not a relevant or exculpatory line of inquiry. The proximate cause jury instruction that the grand jury will be alerted to requires that the act of the defendant be a significant cause of the death and there may be more than one significant cause of the death. *See* UJI 14-251.

Question 33: As explained above, the difference between dummy rounds and blanks will be testified to by other witnesses before the grand jury.

Questions 34-56: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin. The actions of Ms. Gutierrez that contributed to the death of Ms. Hutchins are not a relevant line of inquiry for the grand jury tasked with determining probable cause against Mr. Baldwin. The fact that another person shares responsibility for the death of Ms. Hutchins is not a relevant or exculpatory line of inquiry. The proximate cause jury instruction that the grand jury will be alerted to requires that the act of the defendant be a significant cause of the death and there may be more than one significant cause of the death. *See* UJI 14-251. Moreover, as to any comments by Ms. Gutierrez that there was a box of dummy rounds that suddenly appeared on October 21, 2021, that she was using to source dummy rounds is contrary to the evidence and is therefore not competent. Two boxes of dummy rounds containing .45 Long Colt dummies were supplied to the movie. One box was supplied by Hannah Gutierrez and the other box was supplied by Seth Kenney. Both boxes are in evidence and have been identified as being supplied by Hannah Gutierrez and Seth Kenney. There is no other box of .45 Long Colt dummy rounds in evidence and Hannah Gutierrez identified the box she was sourcing dummy rounds from on October 21,

2021 to Lt. Tim Benavidez with the Santa Fe County Sheriff's Department when he arrived on scene. Hannah Gutierrez acknowledged during her interview with Detective Hancock that the box she provided to Lt. Benavidez was the same box she provided to the set. Moreover, there is substantial evidence that the live rounds found on the set of Rust after the death of Ms. Hutchins had been on the set for at least several days, possibly longer.

Question 57: Evidence will be presented to the grand jury that a total of six live rounds were located on the set of Rust (including the spent casing from the round that killed Ms. Hutchins). The testimony will include where the live rounds were located and that all live rounds were .45 Long Colt rounds with Starline Brass casings.

Question 58: Detective Hancock's level of confidence that Ms. Gutierrez thoroughly checked each round she was loading into the gun is irrelevant and not directly exculpatory to Mr. Baldwin. Moreover, the question as posed is improper as it does not give a time frame that could lead to relevant information.

Questions 59-67: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin. The actions of Mr. Halls that may have contributed to the death of Ms. Hutchins are not a relevant line of inquiry for the grand jury tasked with determining probable cause against Mr. Baldwin. The fact that another person shares responsibility for the death of Ms. Hutchins is not a relevant or exculpatory line of inquiry. The proximate cause jury instruction that the grand jury will be alerted to requires that the act of the defendant be a significant cause of the death and there may be more than one significant cause of the death. UJI 14-251.

Question 68: Testimony will be presented to the grand jury that either Mr. Halls or Ms. Gutierrez stated “cold gun on set” or similar language and the jury will hear evidence as to the difference between a hot gun (gun loaded with blanks) and cold gun (empty gun or gun loaded with dummy rounds).

Questions 69 and 70: The target’s proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Question 71: The target’s proposed question is not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin. Moreover, there has been no competent evidence to date that Hannah Gutierrez shot live rounds out of any guns off or on set at anytime. The target is asking that witnesses testify to rumor and speculation.

Questions 72 and 73: The target’s proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin. Moreover, there has been no competent evidence to date that Hannah Gutierrez shot live rounds out of any guns off or on set at anytime. The target is asking that witnesses testify to rumor and speculation.

Questions 74-80: The target’s proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

There is evidence that Thell Reed and Seth Kenney obtained live .45 Long Colt live rounds for the purpose of training actors to shoot guns for the television show 1883. There is evidence that Seth Kenney took possession of the remaining live rounds left over from the 1883

training camp. The remaining rounds were seized from PDQ Props after the execution of a search warrant and were determined to be substantially different in projectile shape and gun powder than the live rounds found on the set of Rust. There is no competent evidence that the live rounds seized from PDQ Props that were obtained for the 1883 training camp were provided to the set of Rust intentionally or accidentally. The gun powder from the live rounds seized from PDQ is of a completely different chemical design than the live rounds found on the set of Rust. The projectiles from the live rounds seized from PDQ Props were semi-wadcutters and the projectiles from the live rounds found on the set of Rust are not semi-wadcutters. If asked to give an opinion as to whether the live rounds seized from PDQ were similar to the live rounds found on the set of Rust Detective Hancock would state that they were/are not similar in shape or chemical composition.

Questions 81-85: The target's proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Questions 86 and 87: Mr. Souza's statements to Detective Hancock and specifically a statement about Ms. Gutierrez apologizing to him are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Questions 88-89: Detective Hancock will be asked whether she interviewed Alec Baldwin on the date of the incident and that he waived his right to counsel.

Question 91: The length of the interview with Mr. Baldwin is irrelevant to the grand jury's inquiry and will not lead to directly exculpatory evidence.

Question 92: Whether or not Mr. Baldwin believed there could be live ammunition on set is not directly exculpatory and should not be presented to the grand jury. Real guns are dangerous (and despite this, witnesses will testify he insisted on always using the real gun and never a rubber gun or other stand-in) and Mr. Baldwin knew that dummy rounds are designed to look exactly like live rounds. Mr. Baldwin took no steps to determine that there were no live rounds present in the gun he was using prior to pointing it at a person, cocking it and pulling the trigger.

Mr. Baldwin is aware and acknowledged during his interview with Detective Hancock that Hannah Gutierrez gave him the option of checking the gun himself as is standard protocol for the use of real guns on movie sets. It is standard protocol that the armorer load the gun in the presence of the actor and shake the dummy rounds in the presence of the actor so the actor and all other actors and crew members in the area have heard that the rounds rattle consistent with dummy rounds.

When asked by Detective Hancock why he failed to ask the armorer to load the gun in front of him and shake the rounds in his presence to ensure they were dummy rounds, Mr. Baldwin explained that he didn't want to insult Ms. Gutierrez. By his own admission Mr. Baldwin decided to forgo a safety check designed for the sole purpose of ensuring live rounds were not in the gun (because live rounds can easily be brought onto a movie set intentionally or accidentally if mistaken for dummy rounds). Mr. Baldwin decided to forgo the safety check even though he knew that the scene he was preparing to film was going to require him to pull his gun in the direction of crew members and cock the hammer.

The safety bulletins provided to movie sets by the Screen Actors Guild (a professional organization that Mr. Baldwin is surely a member of) specifically state "Treat all weapons as though they are loaded and/or ready to use. Never point one at anyone. Never place your finger

on the trigger until you are ready to shoot.” The sole reason that dummy rounds are used on movie sets is because they look exactly like live rounds. The only way to tell if a dummy round is not a live round is to shake it to determine if it rattles (many dummy rounds have a bb inside) or look at it to ensure it has a hole in the side of the casing so no gun powder could be contained in the brass. Mr. Baldwin understood that each dummy round needed to be checked to ensure it was not a live round. The entire reason these stringent protocols were developed is because there is the possibility of live ammunition being mistaken for a dummy. If the presence of live rounds on movie sets was an impossibility, there would be no reason to inspect every single dummy round to ensure they are not live. Mr. Baldwin was well aware that live rounds can be present on a movie set and failed to conduct his own safety check. The gun/ammo safety check serves a similar purpose as an airbag in a car: it provides protection in the event of a possible, if unlikely, crash. What Mr. Baldwin did is the equivalent of disconnecting an airbag.

Questions 93-102: The target’s proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin.

Questions 103-105: The target’s proposed questions are not relevant to the inquiry before the grand jury as to probable cause that Mr. Baldwin committed the offense(s) of involuntary manslaughter and will not elicit testimony directly exculpatory to Mr. Baldwin. Katya Luce was a crew member on the set of Rust who claims to have overheard Hannah Gutierrez and one of the horse wranglers possibly discussing the firing of guns over the lunch hour on October 21, 2021. Ms. Luce was contacted by the office of special prosecutors and clarified that she thinks she heard Mr. Wilson (one of the wranglers) speaking to Ms. Gutierrez over the radio about “using her toys.” Ms. Luce assumed this statement meant using the set guns. Ms. Luce further

explained that she could not recall exactly what Hannah Gutierrez stated in response, but it was something similar to “you can (play with my toys) as long as I don’t know about it.” Again, Ms. Luce assumed that this conversation was referring to the horse wranglers desire to shoot the guns provided to the movie set. This is not competent and relevant evidence and it is not directly exculpatory to charges related to Mr. Baldwin.

Witness No. 6: Det. Joel Cano

Questions 1-9: The State may elicit general testimony from one or more witnesses concerning the initial response to the scene,. However, the State objects to questions 1-9 being mandated for presentation to the grand jury as the responses to the questions will not elicit directly exculpatory evidence.

Question 10: Whether witnesses characterized the incident as an accident or intentional shooting is irrelevant to the grand jury proceedings, and is not competent evidence as there is no foundation laid for what facts and information these individuals had leading them for form an opinion one way or another. Furthermore, the response to this question is not directly exculpatory evidence.

Question 11: Questions concerning whether the firearm was secured and who had possession of the firearm when law enforcement arrived will not lead to directly exculpatory evidence.

Questions 12-14: Questions concerning Detective Cano’s understanding of the role and responsibilities of the armorer or the identity of armorer will not lead to directly exculpatory evidence.

Questions 15-18: Questions concerning Sarah Zachary’s role and responsibilities on the movie, or her opinions of what may have happened to cause the firearm to discharge a live round inside the church will not lead to directly exculpatory evidence.

Questions 19-21: Questions concerning Mamie Mitchell's location when the gun went off, and the alleged statement by Halls that he noticed one of the rounds looked different from the other five rounds will not lead to directly exculpatory evidence.

Questions 22-24: Questions concerning warrants issued, whether the warrants referenced a crime and how many days after the incident the prop truck warrant was executed will not lead to directly exculpatory evidence.

Question 25: The identity of individuals who had access to the prop truck during the time between the incident and the execution of the warrant is not directly exculpatory evidence.

Question 26: The identity of the individual who provided Cano's "office" with access to the truck when the search warrant was executed is not directly exculpatory evidence.

Witness No. 7: Robert Shilling

Questions 1-9: None of the offered questions for this witness will lead to directly exculpatory evidence.

PART III: DOCUMENTS

The State lodges a global objection to the introduction of all proffered exhibits, as they were not tendered to the State within 48 hours of the start of the grand jury. As the Court is aware, the State made a request for the target to submit his alert letter and exhibits more than 48 hours prior to the start of grand jury. The Court denied this request. As part of its ruling, the Court stated that the rules of the grand jury control and that all evidence from the target must be tendered not later than 9:00 a.m. Mountain Time November 14, 2023. At approximately 9:03 a.m. Mountain Time, the State received an email from the target's local counsel, Heather LeBlanc, stating that, "We are having issues with the exhibit attachments and will send that file separately shortly. Please let me know if you have any difficulties opening any of the

attachments.” See Exhibit 3, p. 1, “Email from Heather LeBlanc dated November 14, 2023.” At approximately 9:09 a.m. Mountain Time, the State received a second email from Ms. LeBlanc stating, “For some reason, I cannot get this to send from my primary email address, so I am sending from this one. Please continue to use heather@leblanclawnm.com for communications.” See Exhibit 3, p. 2. This email also contained a link to a location from which the State could download a ZIP file of the attachments. The landing page to this file sharing download indicates the files were not uploaded to the site until 9:01AM See Exhibit 4: Screenshot of Quinn Emmanuel File Sharing Landing Page. Because the documents were not tendered to the State within 48 hours of the start of grand jury as required by the Court’s verbal order on November 9, 2023, and as required by N.M. R. Crim. P. Dist. Ct. 5-302.2 (B)(3)(c) "The target's written notice of evidence shall be provided to the prosecuting attorney no less than forty-eight (48) hours in advance of the scheduled grand jury proceeding, the State objects to their presentation to the grand jury, except to the extent the State was already planning to introduce the exhibits as part of its own presentation.

The global objection notwithstanding, the State submits the following specific objections to the target’s proffered exhibits:

Document No 1: Recording of 911 Call: The recording of Mamie Mitchell saying that an accidental shooting occurred and attributing responsibility for the incident to Dave Halls is irrelevant and not directly exculpatory. As stated previously in this letter, the proximate cause instruction allows more than one individual to be held responsible for a single criminal act. Placing responsibility on Halls does not relieve the target of his responsibility.

Document No. 2: Prop Truck Warrant: The warrant, which includes statements that the target had been careful with the gun, that the incident was not a deliberate act, and that Halls was

responsible is irrelevant and not directly exculpatory. The proximate cause instruction allows more than one individual to be held responsible for a single criminal act. Again, placing responsibility on Halls does not relieve the target of his responsibility.

Document No. 3: Church Search Warrant: The State intends to have a witness testify that Halls reportedly told the target “cold gun.” The State agrees to present this information to the grand jury, although not via this document.

Document No. 4: PDQ Arm & Prop LLC Search Warrant: The warrant containing the statement that Hannah Gutierrez “didn’t really check [the gun] too much” after lunch, the fact that multiple live rounds were found on set, and that the ammo may have come from a can of ammo Gutierrez’s [step] father had given Seth Kenny, owner of PDQ, is not directly exculpatory evidence. As previously stated, the State contends Baldwin had responsibilities as an actor handing a live firearm that he failed to follow and had the target followed the guidelines, the incident would not have occurred. Again seeking to place blame on another does not relieve the target of his own significant contributions to the incident. This evidence is irrelevant and not directly exculpatory.

Document No. 5: New Mexico Occupation Health and Safety (OSHA) Report: The OSHA report and its findings are not binding on the grand jury. The findings that the target’s authority on the set was limited to approving script changes and actor candidates is based on the target’s own self-serving testimony. OSHA did not review the target’s employment contract, which is the best evidence for determining what the target’s authority was - whether he exercised it or not is irrelevant. The report is also not directly exculpatory evidence.

Document No. 6: Excerpts from Santa Fe Sheriff’s Office Report:

a. Joel Souza - Mr. Souza's recollection of Hannah Gutierrez standing over him apologizing, his opinion there was not negligence on the set, and his opinion of that the 1st Assistant Director and armor hold responsibility for the incident is irrelevant and not directly exculpatory evidence.

b. Hannah Gutierrez - None of the proffered conclusory statements are directly exculpatory evidence and are irrelevant.

c. Sarah Zachary - Ms. Zachary's statements that she thought there were other live rounds in the box of ammunition being used by Gutierrez on the day of the incident, that Gutierrez brought ammunition used from another set, and her identification of blank and dummy ammunition (which does not in any way resemble the live rounds found on set) are irrelevant and not directly exculpatory. A question for the grand jury is whether the target's failure to act in accordance with the safety guidelines for actors was a significant cause of the injury to Ms. Hutchins. Said differently, Ms. Hutchins would not have been killed if the target had done what the guidelines required of him *even if* there was a live bullet in the gun.

d. Dave Halls - Halls' statements of a 5-minute gap between when he checked the revolver and when Gutierrez returned with the gun and his recollection of seeing three depressed primers is not directly exculpatory. The report's conclusion as to who is responsible for firearm safety is irrelevant, as that is fact for the jury to decide.

e. Reid Russel - Russell's general statements that the target was "really safe" on set and the report's conclusion are not directly exculpatory, are irrelevant, and are not controlling as to the grand jury.

f. Jensen Ackles – Mr. Ackles' opinion of what an actor's responsibility is on set is irrelevant. The industry-issued safety guidelines, which the grand jury will see, are controlling as

to the issue of actor's responsibilities on set. Moreover, these statements are not directly exculpatory. Additionally, what Mr. Ackles heard Ms. Hutchins say is irrelevant; the relevant inquiry is what the target heard. This statement is also not directly exculpatory.

g. Ross Addiego – The State intends to call Mr. Addiego as a witness to the grand jury. However, the statement that Gutierrez did not check the gun again after lunch is not directly exculpatory as to the target and his responsibilities as the person holding and discharging the firearm.

h. Sarah Zachary cell phone report: The target has provided an inadequate explanation of the direct exculpatory value of this exhibit. The only information provided by the target was, "Summary of text messages related to the incident found on Sarah Zachary's phone." Consequently, the State having looked at the summary of the messages without any context, believes they are not direct exculpatory evidence and should be excluded.

i. Seth Kenny cell phone report - the same problem exists here as in (h). The target failed to provide any explanation of the exculpatory value of these messages and provided what appears to be an incomplete sentence, "The report also contains statements that suggest the origin of the live ammunition, but that were not investigation by the state at the time including of:" and the sentence cuts off there. Without any explanation, the State reviewed the messages and find that none contain anything rising to the level of directly exculpatory evidence.

j. Katya Luce: This exhibit also fails to include any explanation from the target of the exhibit's proposed exculpatory value. Having reviewed the exhibit, the target highlighted the following statement, "Katya Luce returned my phone call at approximately 12:15 p.m. She called from 808-276-7186. She said she was at base camp when the incident occurred. She said during the day, she heard Raleigh who is one of the Wranglers speaking to Halyna about one of the

firearms and that if they did, she would not want to see it. I did inform the case agents about this information.” Without further explanation from the target, the State cannot respond other than to say on its face, this statement does not rise to the level of directly exculpatory evidence.

Document No. 7: Text Messages between Sarah Zachary and Seth Kenney: Here, the target provides general allegations that the armorer failed to follow property safety protocols on the set, a fragmented sentence reading, “truck the night before the indecent took place” and a conclusory statement that this document therefore demonstrates Gutierrez was an independent intervening cause of Ms. Hutchins death. After reviewing these messages, none of them contain anything that is directly exculpatory.

Document No. 8: Text messages between Hannah Gutierrez and Seth Kenney: The target’s proffer is seriously misleading to the Court. The allegation that these messages contain evidence Gutierrez went “target shooting” with the driver of the prop truck is a complete misrepresentation of the messages. There is a message dated August 15 (several weeks before production even began on the Rust movie) in which Gutierrez asks Kenney if she can shoot “hot” “like actual ammunition” out of the trap door (referencing a firearm). Kenney responds to never shoot live ammo out of a prop gun, and Gutierrez says “...ok fair enough” but indicates she is “still gunna shoot [her personal gun] tho.” At this point in time, Rust production had not begun, Gutierrez was not in New Mexico, the incident firearm had not even been shipped from the seller, and it is therefore impossible Gutierrez was target shooting with the prop truck driver. Any statements about Gutierrez lying about her residency and her failure to generally follow safety protocols are not directly exculpatory evidence.

Document No. 9: Industry Wide Labor-Management Safety Bulletin No. 1. The State intends to submit this document to the grand jury.

Document No. 10: Crew Letter: Nothing in this letter is directly exculpatory evidence.

Document No. 11: Video Clip from Rust Set: The State intends to introduce this video clip to the grand jury.

Document No. 12: Video clip from Rust Set: This clip contains no directly exculpatory evidence.

Document No. 13: Video Clip from Rust Set: This clip contains no directly exculpatory evidence.

Document No. 14: Halls Proffer Transcript: This document contains nothing that constitutes directly exculpatory evidence. Halls' statements that he did not check the gun thoroughly before handing it to Baldwin is not directly exculpatory, as multiple people can be found by the grand jury to have been significant contributors to the harm caused. *See* UJI 14-134 NMRA.

CONCLUSION

For the reasons stated herein, the State respectfully requests the Court enter an order denying and/or limiting the target's requested testimony and evidence, as set forth herein.

RESPECTFULLY SUBMITTED,

/s/ Kari T. Morrissey

Kari T. Morrissey

Jason J. Lewis

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I hereby certify that a true and correct copy of the foregoing pleading was emailed to opposing counsel this 15th day of November 2023.

/s/ Kari T. Morrissey
Kari T. Morrissey

VIA E-MAIL

Special Prosecutor Kari Morrissey
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November 14, 2023

GRAND JURY EVIDENCE NOTICE TO DISTRICT ATTORNEY

INVESTIGATION RE: Alexander Rae Baldwin III

Hearing Date: November 16, 2023

Case No.: D-101-GJ 2023-00008

Dear Ms. Morrissey and Mr. Lewis:

In accordance with Section 31-6-11 NMSA, *Jones v. Murdoch*, 2009-NMSC-002, 145 N.M. 473, and N.M. R. Crim. P. Dist. Ct. 5-302.2(B), the above-noted target of the Grand Jury proceeding in this case requests that the Grand Jurors be alerted to the following lawful, competent, and relevant evidence, and that the proposed questions be asked of the witnesses called before the Grand Jury.

PART I: ELEMENTS¹

Mr. Baldwin requests that the Grand Jurors be alerted to the fact that the criminal negligence standard requires the prosecution to show that Mr. Baldwin had subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition.

Mr. Baldwin requests that the Grand Jurors be alerted that proximate cause is an element of causation, and that the element of proximate cause is negated where the negligence of a third party (*i.e.*, someone other than Mr. Baldwin) was the only significant cause of death or constitutes an intervening cause that broke the foreseeable chain of events.

¹ Given the factual chain of events that led to Ms. Hutchins' death and based on the core principles of Section 31-6-11 NMSA and *Jones v. Murdoch*, Mr. Baldwin submits that failure to instruct the Grand Jury on the applicability of these specific elements will result in fundamental unfairness to Mr. Baldwin.

EXHIBIT

1

PART II: WITNESSES

Witness No. 1: Joel Souza

Potential Testimony: Mr. Souza is the Director of *Rust*. He was primarily responsible for all creative aspects of the film and relied on the entire cast and crew to bring his creative vision to life. He was present in the church during the rehearsal scene and was struck by the fatal bullet after it passed through Halyna Hutchins. He suffered non-life threatening injuries. Mr. Souza's testimony will make clear that responsibility for firearm safety lies with the armorer and First Assistant Director, not with actors, and that Mr. Baldwin did not act negligently on set.

Questions:

1. What was your role on the film *Rust*? What did that entail?
2. To the best of your knowledge, did anyone ever raise any concerns about Mr. Baldwin's attitude towards safety on the set of *Rust*?
3. To the best of your knowledge, has anyone ever raise any concerns about Mr. Baldwin's attitude towards safety on any movie set?
4. Did you personally have any concerns about Mr. Baldwin's attitude toward safety on the set of *Rust*?
5. What kind of movie is *Rust*?
6. Does the script call for the use of firearms?
7. Does the script include scenes that required actors to point prop guns at other actors?
8. Are there any roles for children in the film? What roles?
9. Does the *Rust* script include any scenes that call for a prop gun to be pointed at a child?
10. Who was responsible for safety on the set of *Rust*?
11. Who was responsible for firearm safety on the set of *Rust*?
12. Did you observe Mr. Baldwin handling prop weapons during the production? How many times?
13. Did you ever observe Mr. Baldwin using prop weapons on the set of *Rust* in a way that seemed dangerous or negligent?
14. Do you recall what time you arrived on set on October 21, 2021?
15. Can you describe the scene that was being rehearsed before and after lunch? What happens during that scene? Does the scene involve any firearms?
16. What was the purpose of the rehearsal that began in the church after lunch?
17. Did the script direct Mr. Baldwin to draw his pistol during that scene?

18. Where did you want the camera positioned in relation to Mr. Baldwin?
19. Did you have any concerns about positioning the camera so close to where Mr. Baldwin would be drawing the pistol? Why or why not?
20. Do you recall anyone asking for Mr. Baldwin's revolver to be brought into the church? Do you recall who brought it in?
21. Do you recall how the revolver got into Mr. Baldwin's hand?
22. As far as you could tell, was everyone under the assumption that the gun was safe to handle?
23. As far as you could tell, did anyone seem uncomfortable once the gun was brought in?
24. Once Mr. Baldwin had possession of the gun, did he receive any instructions from you or Ms. Hutchins? What were the instructions?
25. Did you have any concerns about the way Mr. Baldwin was handling the gun in front of the camera?
26. What happened next?
27. Do you recall being taken to a hospital? Can you describe your injuries?
28. Do you recall giving a statement to investigators the following day?
29. Do you recall telling investigators that, shortly after the gun went off, you remember the armorer, Hannah Gutierrez-Reed, standing over you hysterically yelling "I'm sorry, I'm sorry, I'm sorry"?
30. Based on the circumstances, her demeanor and body language, and any other information you had, did you have an understanding at the time of why she was yelling that?
31. Was there a production company that was set up to make *Rust*? What was it called?
32. Were you hired by the production company?
33. Is Rust Movie Productions Alec Baldwin's company?
34. As far as you know, did Mr. Baldwin ever own any part of the production company?
35. Was Mr. Baldwin hired by the production company?
36. Leading up to and during the production, were there people working for the production company whose jobs were strictly to deal with hiring, budgeting, scheduling, logistics, day-to-day management on set, and those sorts of things? Can you briefly name those people and describe their roles?
37. Do you know whether Mr. Baldwin had the authority to hire any crew members?

38. As far as you know, was Mr. Baldwin responsible for managing or supervising any crew members?
39. Did Mr. Baldwin receive a Producer credit for the film?
40. What was that credit intended to reflect?

Witness No. 2: David Halls

Potential Testimony: Mr. Halls was the First Assistant Director and Safety Coordinator on the set of *Rust*. He was in charge of managing and supervising all departments on set and was responsible for safety conditions on set. He is aware of the conditions on set and the day of the incident. He was present in the church when the fatal shot discharged. Mr. Halls's testimony will establish that responsibility for firearm safety lies with the armorer and First Assistant Director, not with actors, and that Mr. Baldwin did not act negligently on set.

Questions:

1. What was your role on the *Rust* set?
2. What is the job of a First Assistant Director?
3. Have you worked as a First Assistant Director on other films? How many?
4. Are you a member of a union? Which union?
5. Does the union provide a specific job description for the role of a First Assistant Director? What does it say?
6. Who was the Safety Coordinator on the *Rust* set?
7. As First Assistant Director and Safety Coordinator, what were your responsibilities with respect to set safety on the *Rust* set?
8. As First Assistant Director and Safety Coordinator, what were your responsibilities with respect to firearm safety on the *Rust* set?
9. Are you familiar with Industry Safety Bulletins? What are they?
10. Are you familiar with Industry Safety Bulletin No. 1? What does it say?
11. Does Safety Bulletin No. 1 note that live ammunition should never be on set? Is that consistent with your understanding and experience on film sets?
12. Based on your experience and industry knowledge, is there ever any reason that anyone on a film set would expect there to be live ammunition anywhere near the set?
13. Did you observe anything at any time during the production of *Rust* that gave you a reason to suspect there might be live ammunition on set?

14. Are you aware of any reasons why anyone else might have expected to find live ammunition anywhere on the set?
15. Did you work with Alec Baldwin at all during the making of *Rust*? How closely did you work with him?
16. Did anyone ever raise any concerns with you with respect to Mr. Baldwin's attitude towards safety on set?
17. Did you personally have any concerns about Mr. Baldwin's attitude toward safety on set?
18. Did anyone ever raise any concerns with you regarding Mr. Baldwin's general conduct on the movie set?
19. Are you aware of any reasons why Alec Baldwin would have had any reason to suspect that live ammunition could be found anywhere on the set?
20. What is the role of the armorer on a movie set?
21. Who was the armorer on the set of *Rust*?
22. Was Hannah someone over whom you would have had oversight and control in terms of making sure they are following her department's safety protocols?
23. What is the difference between a blank and a dummy round?
24. Can you describe the scene that was being rehearsed leading up to the incident?
25. Were you present inside the church during the rehearsal?
26. Did you get on your radio and call for the gun to be brought into the church? What did you say?
27. Did you ask for it to be loaded with dummies?
28. Was it necessary for the gun to be loaded with dummies for the rehearsal? If not, why was it loaded?
29. Are there certain industry protocols that an armorer is supposed to follow when loading dummy rounds into a gun? What are they?
30. Is it customary for the armorer to take each dummy round out of the gun and shake each round before handing the gun off to the actor? If so, why?
31. Is the process of checking a firearm for dummies typically something that happens between the armorer and the First Assistant Director?
32. To the best of your knowledge, are there any rules that require actors to be involved in the process of checking the dummies that are loaded into a prop gun?
33. Is it customary for actors working with prop firearms to rely on assurances from the armorer and First Assistant Director that the firearm is safe to handle?

34. By the time a prop gun loaded with dummies is placed into an actor's hand, is it assumed that the gun is completely safe to handle?
35. Is there any reason at all why Mr. Baldwin would have or should have assumed otherwise on this set?
36. Was Mr. Baldwin asked the point the revolver in the direction of the camera? By whom? Why was that instruction given?
37. Do you have any reason to think Mr. Baldwin would have pointed the gun toward the camera if he wasn't instructed to do so?
38. In your opinion, under the circumstances as you witnessed them, did Mr. Baldwin act carelessly, negligently, or contrary to industry standards in the moments leading up to the gun's discharge?
39. Are you aware of any statements made by your lawyer to the media after the charges against Mr. Baldwin were dropped?
40. Did your lawyer state, "Mr. Halls never believed Mr. Baldwin should be charged with a crime. It was a tragic accident that is best resolved out of criminal court"?
41. Did that statement by your lawyer accurately reflect your views at the time?
42. Have your views since then changed?
43. Are you aware of any statements made by your lawyer to the media in December 2021, before charges were filed against Mr. Baldwin?
44. Did your lawyer state, "Dave has told me since the very first day I met him that Alec did not pull that trigger"? Is that an accurate statement by your lawyer?
45. And does your lawyer speak for you?
46. Do you recall being interviewed by investigators from various state agencies over the past couple years?
47. Do you recall being interviewed in January 2023 by members of the District Attorney's office?
48. Was your counsel present?
49. Did that interview take place in connection with a plea agreement?
50. What was the nature of the plea agreement?
51. Did your plea interview and plea agreement happen before or after charges were initially filed against Mr. Baldwin?
52. During your plea interview, did the Special Prosecutor ask if you felt partially responsible for Ms. Hutchins' death? If so, what was your response?

53. During that interview, did you refer to yourself as “the last line of defense”? What did you mean by that?
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Witness No. 3: Sarah Zachry

Potential Testimony: Ms. Zachry was *Rust*'s prop master, responsible for acquiring, placing, and/or overseeing any props needed for the production, including prop firearms and ammunition. As prop master, she oversaw and supervised the armorer, Hannah Gutierrez-Reed, and was the only other person on set with responsibility for the storage and handling of firearms and ammunition. Along with Hannah Gutierrez-Reed, she was responsible for procuring firearms and ammunition from *Rust*'s third-party supplier. Ms. Zachry will indicate that there were additional live rounds in the box of ammunition that Gutierrez-Reed used the day of the incident, and that Gutierrez-Reed had brought ammunition from another set she had worked on. Zachry will also identify the origin of some of the ammunition on the set. The introduction of a live round is an intervening cause that precludes liability for Mr. Baldwin.

1. What was your role on the film? What did it entail?
2. Who hired you?
3. Is that who did all the hiring?
4. Do you know if Mr. Baldwin was involved in your hiring?
5. Do you know if Mr. Baldwin was involved in the hiring of any other crew members? Whose job was that?
6. Do you know if Mr. Baldwin was involved in supervising crew members or managing any of the various departments on set? Whose job was that?
7. Do you know if Mr. Baldwin was responsible for ensuring crew members followed safety protocols? Whose job was that?
8. Do you know if Mr. Baldwin was involved in scheduling hours for crew members? Whose job was that?
9. Do you know if Mr. Baldwin was involved in budgeting for hours worked by crew members? Whose job was that?
10. Did you ever observe Mr. Baldwin doing anything in relation to the production other than acting?
11. Who was the armorer on the film?
12. As prop master, was part of your job to oversee the armorer?
13. Was part of your job acquiring prop firearms and ammunition to be used on set?
14. Did you share that responsibility with anyone else?

15. What kinds of firearms did you acquire?
16. What kinds of ammunition did you acquire?
17. Where did you acquire prop firearms and ammunition?
18. Do you know if Hannah brought any of her own ammunition to the set of *Rust*? If so, do you know why she did and where it came from?
19. When did you first meet Hannah? What was your initial impression of her?
20. Did you and Hannah spend a lot of time together on the set?
21. Did she take her job seriously?
22. Did she generally get along with others?
23. Did she pay attention and follow instructions?
24. Was she better at some parts of her job than others?
25. Did Hannah ever talk about her father? What did she say about him?
26. Did Hannah project confidence in her knowledge and handling of firearms?
27. Did you ever feel like she might have gotten too confident or lax around firearms from having grown up around them with her father?
28. Did you ever get the impression that Hannah felt like she could do things her own way because of who her father was?
29. Can you explain the difference between a blank and a dummy?
30. Under what circumstances would they be using blanks on set?
31. Under what circumstances would they be using dummies on set?
32. Is it important for an armorer to be well organized?
33. Did Hannah seem well organized to you? Did she have a system for keeping the different types of rounds separated? Did she keep loose rounds floating around the cart or in her pockets?
34. Did Hannah ever put things in the wrong place or get things mixed up? Did she ever forget about things? Did she ever lose or misplace things?
35. How were firearms and ammunition being stored on set?
36. Can you describe the prop truck that you used on set?
37. Who had access to it during the day? At night?
38. When were the guns put in the safe? Who had the code to the safe?

39. How was the ammo delivered to set? Did it come in boxes? What did the boxes look like?
40. Were boxes of ammo kept in the safe or on the truck?
41. How did you transport things from the truck to the set?
42. Do you remember what time you arrived on set on October 21, 2021?
43. Were you working with Hannah that day?
44. Were there guns being used before lunch? Which ones? Were they loaded?
45. What did you do with the guns during lunch? Were they unloaded? What about the cart? Was anything left on the cart?
46. When you got back from lunch, what was happening on set? Were the same guns being used after lunch? Who got the guns from the truck?
47. Was Alec's gun different than the others? Who carried Alec's gun? Who carried the ammo?
48. Did you notice anything different about the guns or the ammo that afternoon? Did you notice anything different about Hannah?
49. Who was going to be loading Alec's gun for the scene in church?
50. Did you watch Hannah load the gun? How many rounds did she load into the gun?
51. Were there any rounds left in the gun from before lunch? Did she take them out and check them? Is that something she was supposed to do?
52. How many rounds did Hannah load into the gun after lunch? Did you see what kind of rounds they were?
53. Did you see where Hannah pulled the rounds from? Was there anything unusual about the way in which she pulled the rounds? Did she say anything as she was pulling the rounds?
54. At what point did they ask for the gun to be brought into the church? Who asked for it? How did he ask for it?
55. Did Hannah finish loading the gun before she went into the church? Were you near her when she finished loading the gun? Did you watch her do it? Did she seem distracted? Did she do everything she was supposed to do? If not, what do you think she should have done differently?
56. What happened after Hannah brought the gun into the church?
57. Did you hear the gun go off? Where were you? What did you think it was?
58. How many minutes elapsed between the time Hannah brought the gun into the church and the time you heard the loud noise?

59. Did you or Hannah go into the church to see what had happened? At what point did you realize the gun had discharged?
60. What do you remember Hannah doing and saying over the next couple minutes? Did she say anything that stood out to you? How would you describe her emotional state?
61. Did you go back and check the box where she had pulled the rounds from that she loaded into Alec's gun? What did you find? Could you tell if there were any live rounds in there? How could you tell?
62. What was Hannah saying and doing over the next couple hours?
63. At what point did you learn that Alec was holding the gun that went off? Did you talk to him? What was he doing and saying? Can you describe his emotional state?
64. Did anybody think that a live round had been discharged at this point? At what point did you learn that was the case?
65. Do you have an opinion as to how a live round ended up on the set?
66. How does one identify a live round from a dummy round?
67. Is Hannah able to identify a dummy round from a live round?
68. Do you think if Hannah was properly checking the rounds as she was loading Alec's gun, she would have noticed that one of them was a live round?
69. What was the name of your ammo supplier?
70. Did you let him know what had happened? When? What did he say? Did he say anything that suggested he might have made a mistake?
71. After the incident with Halyna, did you become aware of a text message conversation between Hannah and Seth where Hannah asked if she could shoot "hot rounds" out of a prop gun on the set of a different film? What do you remember about the conversation? Did it surprise you?
72. Have you heard rumors Hannah engaged in "target practice" on the set of *Rust* at night or on the weekends? What did you hear? Did you think it was true?
73. To your knowledge, did Hannah drink or do drugs while she was working on set? Did she drink or do drugs off when she wasn't working?
74. Have you ever been to Seth's shop where he keeps his firearms and ammo? How would you describe it? Is it well organized?
75. How closely did you work with Alec Baldwin during the production? Did you ever speak to him? What was he like?
54. Did you have any concerns about Alec's attitude toward firearm safety on set?

55. To your knowledge, did anyone else have any concerns about Alec's attitude toward firearm safety?
 56. Did you or anyone else have concerns about Alec's general conduct on the movie set?
 57. Did you ever observe him handling the firearms in a way that seemed unsafe?
 76. Do you have an opinion about who is responsible for causing Halyna's death?
-

Witness No. 4: Ryan Smith

Potential Testimony: Mr. Smith was a Producer of the film *Rust* and was responsible for overseeing the overall production. He has knowledge of the various roles and responsibilities of members of the production. Mr. Smith will establish that Mr. Baldwin did not have responsibility for selection or hiring of crew or for the day-to-day operation of the production, and that he did not act negligently.

1. What was your role in connection with the film *Rust*?
2. What is Rust Movie Productions LLC? Did you have any involvement in that company? What was your involvement?
3. Is Rust Movie Productions Alec Baldwin's company?
4. Was Alec Baldwin hired by Rust Movie Productions? What was he hired to do?
5. Was there a contract between Rust Movie Productions and Alec Baldwin? Did the contract limit Mr. Baldwin's authority in any way?
6. Did the contract say that Alec Baldwin would be credited as a Producer? Why was it important for Mr. Baldwin to be credited as a Producer?
7. Were cast and crew members hired by Rust Movie Productions?
8. Who at the production company was responsible for hiring crew members?
9. Was Mr. Baldwin involved in hiring any crew members?
10. If Mr. Baldwin wanted to hire a crew member, is that something he could have done on his own without the production company's permission?
11. Was Mr. Baldwin involved in supervising crew members or managing any of the various departments on set? Whose job was that?
12. Was Mr. Baldwin responsible for ensuring that crew members followed safety protocols? Whose job was that?
13. Was Mr. Baldwin involved in scheduling hours for crew members to work? Whose job was that?

14. Was Mr. Baldwin involved in budgeting for hours worked by crew members? Whose job was that?
 15. Did you ever observe Mr. Baldwin on set?
 16. Did anyone ever raise any concerns with you with respect to Mr. Baldwin's attitude towards safety on set?
 17. Did anyone ever raise any concerns with you regarding Mr. Baldwin's general conduct on the movie set?
-

Witness No. 5: Det. Alexandria Hancock

Potential Testimony: Detective Hancock is a Santa Fe Sheriff's Detective who acted as the lead investigator on the case. She has knowledge of how the investigation proceeded and the evidence it yielded, how evidence was gathered, and potential gaps in the investigation that suggest Mr. Baldwin's innocence.

Questions:

1. What was your overall role in the investigation of this matter?
2. Once law enforcement arrived at the scene where the incident took place, did law enforcement do anything to isolate potential witnesses from one another?
3. Is it standard practice to do so?
4. Did the officers clear the firearm?
5. Is it standard practice to do so?
6. Did you issue any search warrants in this case?
7. Did you list a suspected crime in any of those warrants?
8. How long after the incident did you execute the warrant on the prop truck?
9. Did anybody have access to the prop truck during that six-day interim period? Who?
10. Who provided you with access to the truck when you executed the warrant?
11. In connection with your investigation, did you interview the film's armorer?
12. Did you develop an understanding of the role and responsibilities of an armorer?
13. Do you know who Hannah reported to? Was it Sarah Zachry, the Prop Master?
14. Did you interview an actor named Jensen Ackles in connection with the incident?
15. Did Mr. Ackles strike you as someone who was familiar with firearms?

16. Did you get the impression that Mr. Ackles was more comfortable and knowledgeable around firearms than the average actor?
17. Did Mr. Ackles ever tell you that Hannah portrayed a “cocky persona” and appeared “confident in what she did” as an armorer?
18. Based on your interviews with witnesses and other evidence you have seen, did you get the sense that Hannah projected confidence around firearms?
19. Based on your interviews with witnesses and other evidence you have seen, did you get the sense that Hannah was less experienced or less organized than she appeared?
20. Did you conduct an interview with Hannah at the Sherriff’s Office a few hours after the incident?
21. When you entered the interview room to speak with Hannah, did she immediately ask if anyone was able to get her fanny-pack, which was still at the scene where the incident took place? Did that make you wonder whether she was concerned that someone might go through the fanny-pack and find something that shouldn’t be in there?
22. During your initial interview with Hannah, did Hannah describe how she loaded the gun that killed Halyna Hutchins?
23. Did she advise that she loaded five rounds into the gun before lunch, but was having trouble getting the sixth round to go in at that time?
24. Did she advise that, after lunch, she “didn’t really check” the gun because it had been locked up during lunch?
25. Did she advise that the box from which she grabbed the rounds that were loaded into the gun after lunch may have had some “wonky” rounds in it?
26. Did she state that she “wishes she would have checked [the gun] more” before bringing it to the set?
27. Did you conduct a second interview with Hannah on November 9, 2021?
28. Did Hannah’s story change at all from what she had told you on the day of the incident?
29. During your second interview with Hannah, did Hannah describe her process for keeping blanks and dummy rounds organized?
30. Did she state that many of the dummies on the set of *Rust* were “loose dummies” that she had found in a bag from a previous project?
31. Did she state that she used various types of dummies on the set of *Rust* and that the different types would regularly get mixed up?
32. Did she state that she would put both dummy rounds and blanks in her fanny-pack?
33. What’s the difference between a dummy round and blank?

34. Did she state that she had a “pocket system” where she would put different types of ammo in different pockets?
35. Did she state that she also kept trash in her pockets?
36. Did she state that she carried her “favorite dummies” in her pocket because that’s what her dad taught her to do?
37. Did you ask Hannah which box she was pulling ammunition from on the day Halyna Hutchins was killed?
38. Did Hannah state that the box she was pulling ammunition from on that day looked “peculiar”?
39. Did she state that she couldn’t recall ever seeing that box on the prop truck before that day?
40. Did she state that she shook the whole box and heard it rattle, which indicated to her that they must be dummies?
41. Did she state that she brought that box to her prop cart for the day?
42. Did she state, as she had in her previous interview with you, that she loaded five rounds into the gun before lunch, but had trouble loading the sixth round and saved it for after lunch?
43. Did she state that she loaded the sixth round after lunch?
44. Did you ask Hannah if she checked the round that she loaded after lunch?
45. Did she state that the round “seemed fine” to her and that she “checked it while Dave [Halls] was speaking over the radio in her earpiece as she shook it”?
46. Did Hannah’s description of events give you the impression that she was rushing to load the gun as she was walking into the church?
47. Did Hannah’s description of events give you the impression that she may not have carefully checked the last round as she loaded it into the gun?
48. Did Hannah state that she showed the gun to Dave Halls when she brought it into the church so that Halls could check it?
49. Did you ask Hannah what that check consisted of when she showed the gun to Halls?
50. Did she state that the check consisted of her spinning the cylinder and telling Halls that it was “dummied up”?
51. Did she state that she left the church at that point after she gave the gun to Halls?
52. Did she state that she was standing outside of the church when she heard the gunshot?
53. Did she state that she went into the church and was informed that the loud noise came from the gun?

54. Did she state that her immediate response to learning about the discharge was to say “go check that fucking box,” meaning the box where she had pulled the ammunition from?
55. Did you ask Hannah if anyone on set was drinking alcohol or using drugs?
56. Did she state that she typically smoked marijuana on the weekends and “a little bit before bed”?
57. Other than the bullet that killed Halyna Hutchins, did you find any other live ammunition on the set? If so, what did you find? Where?
58. Based on your interviews with Hannah and other witnesses, are you confident that Hannah thoroughly checked each round as she was loading them into the gun?
59. In connection with your investigation of this matter, did you interview the First Assistant Director, Dave Halls?
60. Did Mr. Halls tell you that he was the Safety Coordinator on the set?
61. Do you have an understanding of what Mr. Halls’ responsibilities were with respect to safety on set?
62. Do you have an understanding of what Mr. Halls’ responsibilities were with respect to firearms on set?
63. Did you speak to Mr. Halls on the day of the incident?
64. Do you recall asking Mr. Halls about safety protocol on set in regards to firearms?
65. In response to that question, did Mr. Halls give the following statement: “I check the barrel for obstructions, most of the time there’s no live fire, she (Hannah) opens the hatch and spins the drum, and I say cold gun on set.”
66. Did Mr. Halls advise that on this occasion, “when Hannah showed him the firearm before continuing rehearsal, he could only remember seeing three rounds.”
67. Did Mr. Halls advise that “he should have checked all of them, but didn’t, and couldn’t recall if [Hannah had] spun the drum”?
68. Were you advised by any witnesses who were inside the church at the time of the incident whether Mr. Halls did, in fact, say “cold gun on set” as the gun was being handed to Mr. Baldwin? How many witnesses told you that?
69. Who is Seth Kenny?
70. Did Seth’s company, PDQ Arm & Props, supply the firearms and ammunition for *Rust*?
71. Are you aware of any evidence that Hannah engaged in “target practice” on the set of *Rust* at night or on the weekends? What evidence is that?

72. Were you ever informed that one of the truck drivers working on the production claimed to have engaged in target practice with Hannah on the set of *Rust* prior to October 21, 2021?
73. Did your office pursue that lead during your investigation? What did your office do to pursue that lead?
74. Were you ever informed that Seth and Hannah's father, Thell Reed, worked on a television show together before *Rust*? Was that show called *1883*?
75. Were you ever advised that Seth and Thell Reed were asked to train some of the *1883* actors with live ammo?
76. Were you ever advised that Thell Reed brought his own live ammo to the set of *1883*, which Seth then took back to his shop once the show was over?
77. Did you ever obtain a search warrant to search Seth's business?
78. Did you search the premises? What did it look like? Was it well organized?
79. Did you find live rounds on the premises of Seth's business? If so, were they similar to the live rounds that were found on the set of *Rust*?
80. Based on your investigation, do you have an opinion as to whether Seth may have inadvertently supplied Hannah with live ammunition?
81. Did you ever obtain a warrant to search the prop truck on the set of *Rust*?
82. What was the prop truck used for?
83. How many days after the incident did you execute that warrant?
84. Do you know whether anybody had access to the prop truck before you executed the warrant?
85. Do you feel confident that no one accessed the prop truck between the time of the incident and the time you executed the search warrant?
86. Are you familiar with the various statements that Joel Souza has made in connection with the investigation into this matter?
87. Do you recall a statement by Mr. Souza that, shortly after the gun went off and he hit the floor, he remembered Hannah Gutierrez-Reed standing over him hysterically yelling "I'm sorry, I'm sorry, I'm sorry"
88. In connection with your investigation, did you interview Alec Baldwin?
89. Did you interview him the day of the incident? Where?
90. Did Mr. Baldwin volunteer to answer questions? Did he ask for a lawyer to be present?
91. Did that initial interview last for more than an hour?

92. Are you aware of any evidence that Mr. Baldwin believed there could be live ammunition on the set of *Rust*?
93. Are you aware of any evidence that Mr. Baldwin didn't trust the other professionals on the set to perform their various roles?
94. Are you aware of any evidence that Mr. Baldwin didn't have confidence in Hannah's abilities as an armorer?
95. Are you aware of any evidence that Mr. Baldwin didn't have confidence in Dave Halls' abilities as a First Assistant Director?
96. Are you aware of any evidence that Mr. Baldwin was responsible for hiring or supervising any crew members?
97. Are you aware of any evidence that Mr. Baldwin was responsible for ensuring that crew members complied with safety protocols on set?
98. Based on your investigation, do you have an understanding of who was responsible for hiring and supervising crew members?
99. Based on your investigation, do you have an understanding of who was responsible for ensuring compliance with safety protocols on set?
100. Did you receive a report from the Medical Examiner?
101. Did it recite a cause of death?
102. What was the cause of death listed in that report?
103. As part of your investigation, did someone from your team speak to Katya Luce?
104. Are you aware of what Ms. Luce reported with respect to the interaction between the wranglers on set and Hannah Gutierrez-Reed?
105. Did you or your office follow up with Ms. Luce to clarify her comments?

Witness No. 6: Det. Joel Cano

Potential Testimony: Detective Cano is a Santa Fe Sheriff's Detective who acted as one of the investigators on the case. He has knowledge of how the investigation proceeded and the evidence it yielded, how evidence was gathered, and potential gaps in the investigation that suggest Mr. Baldwin's innocence.

Questions:

1. What was your overall role in the investigation of this matter?
2. Did you report to the set following the accident?

3. Around what time did you arrive?
4. Did you have an understanding as to what had happened before you arrived?
5. Was the scene of the accident secured when you arrived?
6. How was it secured?
7. Once law enforcement arrived at the scene where the incident took place, did law enforcement do anything to isolate potential witnesses from one another?
8. Were the individuals inside the church separated from one another or were they permitted to intermingle and converse with one another?
9. After being briefed by your colleagues, did you speak to any individuals who had witnessed the incident?
10. Did the witnesses characterize the incident as an accident or an intentional shooting?
11. By time you arrived at the scene, had the firearm that was involved in the incident been secured? Do you know who had possession of the firearm when your law enforcement colleagues arrived on the scene?
12. Do you have an understanding as the role of an armorer on a film set?
13. Do you have an understanding as to who the armorer was on the set of *Rust*?
14. Do you have an understanding as to what Hannah's responsibilities were as the armorer?
15. Did you ever interview a crew member named Sarah Zachry?
16. Did you have an understanding as to Ms. Zachry's role in the production?
17. Did you have an understanding as to whether Ms. Zachry acted in a supervisory role in relation to Hannah?
18. Did you ask Ms. Zachry's opinion as to what might have happened to cause the firearm to discharge a live round inside the church?
19. A couple hours after the incident, did you interview a witness by the name of Mamie Mitchell?
20. Did Ms. Mitchell say where she was when the gun went off?
21. Did Ms. Mitchell state that shortly after the gun went off, she saw Mr. Halls weeping and saying how when he checked the revolver, he noticed that one of the rounds looked different from the other five rounds?
22. Are you aware of any warrants issued in connection with this case?
23. Did any of those warrants reference a crime?

24. How many days after the incident did you execute the warrant on the prop truck?
25. Do you know if anybody had access to the prop truck during that six-day interim period? Who?
26. Do you know who provided your office with access to the truck when the search warrant was executed?

Witness No. 7: Robert Schilling

Proposed Testimony: Mr. Schilling was hired as an investigator for the state and was aware of deficiencies in the investigation, including leads that were not run down. He expressed his view that the investigation conducted by the Santa Fe Sheriff's Office over the course of more than a year could not be remediated, which, in turn, suggests Mr. Baldwin is not responsible for the death of Ms. Hutchins.

Questions:

1. How did you come to be involved in the investigation?
2. At what point did you become involved?
3. What was your specific role?
4. Did you interview any witnesses? Examine any evidence?
5. Did the investigation follow the protocols you were used to seeing? If not, what differed?
6. Did you do or say anything to try to correct any flaws you perceived in the way the investigation was being approached?
7. Were there any decisions made during the investigation by law enforcement or the District Attorney's office that caused you to doubt the motives of the decisionmakers?
8. Did you ever communicate your discomfort with the investigation to anyone?
9. Did you become aware of the District Attorney's decision to charge Alec Baldwin with involuntary manslaughter in January 2023?

PART III: DOCUMENTS

Document No. 1: Recording of 911 Call

The document is an audio-recording of the 911 call placed by Mamie Mitchell, the film's script supervisor, immediately after the incident took place. Ms. Mitchell witnessed the incident from inside the church and was standing just a few feet away from where the gun went off. On the recording, Ms. Mitchell can be heard telling the 911 operator that two people were "accidentally

shot” on a movie set. She is also heard saying that Dave Halls, the First Assistant Director, was “supposed to check the gun” and that “he’s responsible for [inaudible].” The recording demonstrates that Mr. Baldwin lacked the requisite state of mind and that Mr. Halls was an independent intervening cause of Ms. Hutchins’ death.

Document No. 2: Prop Truck Warrant

On October 27, 2021, the Sante Fe Sherriff’s Office executed a warrant for the prop truck on the *Rust* movie set, which is where firearms and ammunition were stored throughout the production. The warrant contains numerous exculpatory statements from several witnesses, including a statement from camera operator Reid Russel (who said Mr. Baldwin “had been very careful” with the firearms) and a statement from Dave Halls, who said the incident “was not a deliberate act” and “he [Halls] should have checked all of [the rounds in the gun], but didn’t.” This document demonstrates that Mr. Baldwin lacked the requisite state of mind and that Mr. Halls was an independent intervening cause of Ms. Hutchins’ death. Furthermore, the warrant does not identify any crime being committed, and the fact that it was not executed until six days after the fatal incident demonstrates that there was ample time for the prop truck to be tampered with by the armorer or ammunition supplier, both of whom had access.

Document No. 3: Church Search Warrant

On October 22, 2021, the Sante Fe Sherriff’s Office executed a warrant at the church on the *Rust* movie set where the incident took place. The warrant contains numerous exculpatory statements from the affiant, including a statement that Dave Halls “handed the gun to” Mr. Baldwin and “yelled, ‘Cold Gun,’ indicating the prop-gun did not have any live rounds.” This document therefore demonstrates that Mr. Baldwin lacked the requisite state of mind and that Mr. Halls was an independent intervening cause of Ms. Hutchins’ death.

Document No. 4: PDQ Arm & Prop LLC Search Warrant

On November 30, 2021, the Sante Fe Sherriff’s Office executed a warrant at PDQ Arm & Prop LLC, the shop that supplied the rounds to the *Rust* set. The warrant states that Hannah Gutierrez-Reed, the film’s armorer, admitted that she “didn’t really check [the gun] too much” after lunch. The warrant also states that multiple live rounds were found on the set in the box of ammo that Gutierrez-Reed was pulling from, and that Gutierrez-Reed’s father had given Seth Kenney, the owner of PDQ, a can of live ammo that may match the live ammo found on the *Rust* set. This document therefore demonstrates that Mr. Baldwin lacked the requisite state of mind and that others—particularly Hannah Gutierrez-Reed and Seth Kenney—were independent intervening causes in Halyna Hutchins’ death

Document No. 5: New Mexico Occupational Health and Safety Report

This document is a report from the New Mexico Occupational Health and Safety Bureau, which conducted an investigation to determine whether the incident was caused by the failure of Rust Movie Productions LLC or its employees to implement proper workplace safety protocols. The report demonstrates that Mr. Baldwin was not part of *Rust* Management—*i.e.*, the individuals responsible for hiring, scheduling, budgeting, and overseeing set safety. The report states that “Baldwin’s authority on the set” was limited to “approving script changes and actor candidates.” This document demonstrates that Mr. Baldwin was not responsible for hiring crew members or for any scheduling or budgeting decisions and therefore had no knowledge of any issues that might contribute to an unsafe work environment (*e.g.*, the fact Hannah Gutierrez-Reed had asked for more armorer days).

Document Nos. 6(a)-6(j): Excerpts From Santa Fe Sherriff’s Office Report²

These documents represent excerpts of reports from the Santa Fe Sherriff’s Office. Each report was prepared by the lead investigator, Det. Alexandria Hancock, or by another investigator, Joel Cano. The reports summarize interviews with several key witnesses which were conducted on the scene immediately following the incident and in the weeks that followed, including:

a. Joel Souza (director)

The report indicates that Souza, who was hit by the bullet that fired the day of the incident, recalled Hannah Gutierrez-Reed standing over him apologizing. He identified her as the person on set responsible for firearms, and that guns are to be checked by the armorer (Gutierrez-Reed) and the First Assistant Director (Halls). The report reflects that Souza did not believe there was negligence on set. The report makes clear that responsibility for firearm safety lies with the armorer and First Assistant Director, not with actors, and that Mr. Baldwin did not act negligently on set.

b. Hannah Gutierrez-Reed (armorer)

The report indicates that Gutierrez-Reed stated that she was the armorer on set and that she loaded the firearm involved in the incident. Gutierrez-Reed stated that she handed the firearm off to Dave Halls before the incident. She also stated that the dummy rounds were provided to her by Seth Kenny, who, in turn borrowed them from someone else.

c. Sarah Zachry (prop master)

The report indicates that Zachry thought there were additional live rounds in the box of ammunition that Gutierrez-Reed used the day of the incident, and that Gutierrez-Reed had brought ammunition from another set she had worked on. Zachry identified the origin of

² The Target anticipates the entire Sheriff’s Report, which was made public, will be presented to the Grand Jury, but, given its volume, the Target has excerpted these particular sections and submits them for the Grand Jury’s consideration.

some of the ammunition on the set as from Seth Kenney and Billy Ray. The introduction of a live round is an intervening cause that precludes liability for Mr. Baldwin.

d. Dave Halls (first assistant director)

The report indicates that Halls stated he was the safety coordinator and that the armorer was Hannah Gutierrez-Reed. He explained that he would routinely check firearms with the armorer, but that, the day of the incident, there was a 5 minute gap between when he checked the revolver at issue was empty and when Gutierrez-Reed returned, having loaded what he understood to be dummy rounds in the revolver. He recalled seeing three depressed primers. The report makes clear that responsibility for firearm safety lies with the armorer and First Assistant Director, not with actors.

e. Reid Russel (camera man)

The report states that Reid reported that Mr. Baldwin was “really safe” on set, including asking to move a child actor away from gunfire. The report indicates Mr. Baldwin was not negligent in his handling of firearms.

f. Jensen Ackles (actor)

The report indicates that Ackles explained that it is not the job of an actor to check their own firearms. Ackles also reported that he had not seen Baldwin handle firearms in a reckless manner on the set, and that, the time of the incident, he had heard Halyna Hutchins tell Mr. Baldwin to “show her the action” just before the fatal shot fired. He concluded that Mr. Baldwin would have been doing as instructed at the time the shot fired. The report indicates Baldwin was not acting negligently, and did not have the required state of mind, and that he was not responsible for checking his own weapon.

g. Ross Addiego (electrical)

The report indicates Mr. Addiego heard that Gutierrez-Reed say that the firearm was clear, but also that she did not check it after lunch and before the rehearsal began in the church.

The reports also summarize information obtained from the cell phones of Sarah Zachry and Seth Kenney:

h. Sarah Zachry cell phone report

Summary of text messages related to the incident found on Sarah Zachry’s phone.

i. Seth Kenney cell phone report

Summary of text messages related to the incident found on Seth Kenney’s phone.

The report also contains statements that suggest the origin of the live ammunition, but that were not investigated by the state at the time, including of:

j. Katya Luce

Summary of statements from Katya Luce related to statements she overheard by one of the wranglers on set.

These excerpts of the Santa Fe Sheriff’s Office contain numerous statements from each witness that demonstrate that Mr. Baldwin lacked the requisite state of mind and that others—particularly Hannah Gutierrez-Reed, Dave Halls, and Seth Kenney—were independent intervening causes in Halyna Hutchins’ death.

Document No. 7: Text messages between Sarah Zachry and Seth Kenney

This document contains excerpts of text messages exchanged between Sarah Zachry, the film’s prop master, and Seth Kenney, the ammo supplier for the production. The messages reflect that the film’s armorer, Hannah Gutierrez-Reed, failed to follow proper safety protocols on the set of *Rust* and a previous film project. truck the night before the incident took place. This document therefore demonstrates that Ms. Gutierrez-Reed, who was responsible for the safety of prop firearms on set, was an independent intervening cause of Halyna Hutchins’ death.

Document No. 8: Text messages between Hannah Gutierrez-Reed and Seth Kenney

This document contains excerpts of text messages exchanged between Hannah Gutierrez-Reed, the film’s armorer, and Seth Kenney, the ammo supplier for the production. The messages reflect that Gutierrez-Reed failed to follow proper safety protocols on the set of *Rust*, was negligent in her handling and storage of firearms and ammunition, and lied about her work experience and residency in applying the armorer’s union in California. The messages also contain evidence that Ms. Gutierrez-Reed went “target shooting” with the driver of the prop truck. The messages also contain evidence that Dave Halls, the first assistant director, did not follow safety protocols on set. This document therefore demonstrates that Hannah Gutierrez-Reed and/or Dave Halls acted as independent intervening causes of Halyna Hutchins’ death.

Document No. 9: Industry Wide Labor-Management Safety Bulletin No. 1

This document contains guidelines for the proper handling of firearms and ammunition on film sets, including that the Prop Master and First Assistant Director are responsible “for obtaining, maintaining and handling all firearms for the production” and that “the production’s designated Safety Representative [is] to assure that” the safety protocols are adhered to.

The Bulletin also states that actors must be “allowed to” (but are not required to) witness the loading of firearms, and that firearms must be checked by the prop master or weapons handler “before each use.” This document demonstrates that Mr. Baldwin complied with firearm safety protocols on set, but that the armorer, prop master, and first assistant director did not. The document therefore demonstrates that others—particularly Hannah Gutierrez-Reed, Sarah Zachry and/or Dave Halls—acted as independent intervening causes of Halyna Hutchins’ death.

Document No. 10: Crew Letter

The letter, signed by many of the cast and crew, refutes that the set of *Rust* was inherently unsafe, or that it was an unpleasant environment. It notes that producers were supportive of the cast and crew. This refutes any assertion that the set was inherently dangerous, or made that way by any action by Mr. Baldwin.

Document No. 11: Video Clip from *Rust* Set

This video depicts Mr. Baldwin being attentive to safety on set, and specifically shows him asking a cast member to move to another position so that he is not in the line of fire in a scene involving blanks. The video shows that Mr. Baldwin was not negligent or careless regarding set safety or the handling of firearms during the course of the filming.

Document No. 12: Video Clip from *Rust* Set

This video depicts Mr. Baldwin being attentive to proper firearm handling on set, and specifically shows him asking that a blanket be placed on the ground where he will have to throw a revolver in the scene so that the firearm is not thrown in the dirt. The video shows that Mr. Baldwin was not negligent or careless regarding set safety or the handling of firearms during the course of the filming.

Document No. 13: Video Clip from *Rust* Set

This video depicts Mr. Baldwin being attentive to safety on set, and specifically shows him halting a scene due to unstable footing for the camera crew. The video shows that Mr. Baldwin was not negligent or careless regarding set safety during the course of the filming.

Document No. 14: Halls Proffer Transcript

The transcript reflects that Mr. Halls was in charge of safety on the set of *Rust* and that he worked with armorer Gutierrez-Reed to ensure the safety of firearms used on set. He explains that Gutierrez-Reed loaded the firearm with dummies in between the time Halls checked it with her, and that he did not check it thoroughly, though that had been his past practice. The transcript further underscores that no member of the cast or crew could have anticipated there would be live rounds in the firearm on the set.

The transcript reflects several intervening causes that negate Mr. Baldwin's potential culpability, and undermines the assertion that Mr. Baldwin acted recklessly or negligently with respect to firearms on the set of *Rust*.

* * * * *

Contact information for the witnesses above is in the attached Grand Jury Evidence Alert Letter as required by *Jones v. Murdoch*, 2009-NMSC-002, 143 NM 473.

Pursuant to Section 31-6-11(B) NMSA and *Jones*, 2009-NMSC-002, the Grand Jury Evidence Alert Letter attached must be presented to the Grand Jury in this matter. We request that the Evidence Alert Letter be read into the grand jury proceeding record and provided directly to the grand jurors.

Furthermore, if any of the witnesses listed in the attached Grand Jury Evidence Letter testify before the Grand Jury, the proposed target requests that the witnesses be questioned in a manner that elicits the general information contemplated by the proposed questions attached. *See Jones v. Murdoch* (prosecutor must elicit general information contemplated by target).

Failure to present the attached letter or ask the appropriate questions of witnesses will violate Section 31-6-11 and *Jones*, 2009-NMSC-002, unless the prosecutor files a motion with the grand jury judge, with notice to the target and his or her counsel, seeking the court's permission to not present the requested evidence or grand jury letter. Notice of any motion filed may be made directly to me by email to Heather@LeBlancLawNM.com

In addition to the proposed witnesses, questions, and instruction, please be advised that the above noted client does not wish to testify.

In the event our client is indicted, we respectfully request that they be sent notice of the arraignment hearing so that they may make a voluntary appearance.

This will certify that a copy of the foregoing
emailed to the above-named prosecutor on:

Date/Time: November 14, 2023



Heather M. LeBlanc
Counsel for Mr. Baldwin

Respectfully submitted,
LEBLANC LAW LLC



Heather M. LeBlanc
823 Gold Ave. SW
Albuquerque, NM 87102
Heather@LeBlancLawNM.com
Phone: 505-331-7222

GRAND JURY EVIDENCE ALERT LETTER

INVESTIGATION RE: Alexander Rae Baldwin III

Hearing Date: November 16, 2023

Case No.: D-101-GJ 2023-00008

Dear Grand Jurors:

In accordance with the rights and obligations of the Grand Jury under New Mexico law, the above-noted subject/target of the Grand Jury proceeding in this case requests the grand jury consider the following evidence:

PART I: ELEMENTS

Mr. Baldwin requests that the Grand Jurors be alerted to the fact that the criminal negligence standard requires the prosecution to show that Mr. Baldwin had subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition.

Mr. Baldwin requests that the Grand Jurors be alerted that proximate cause is an element of causation, and that the element of proximate cause is negated where the negligence of a third party (*i.e.*, someone other than Mr. Baldwin) was the only significant cause of death or constitutes an intervening cause that broke the foreseeable chain of events.

PART II: WITNESSES

Witness No. 1: Joel Souza: Contact: souzajoel007@yahoo.com (510) 552-2171

Potential Testimony: Mr. Souza is the Director of *Rust*. He was primarily responsible for all creative aspects of the film and relied on the entire cast and crew to bring his creative vision to life. He was present in the church during the rehearsal scene and was struck by the fatal bullet after it passed through Halyna Hutchins. He suffered non-life threatening injuries.

Witness No. 2: David Halls: Contact: davehalls.ad@gmail.com (612) 414-6056

Potential Testimony: Mr. Halls was the First Assistant Director and Safety Coordinator on the set of *Rust*. He was in charge of managing and supervising all departments on set and was responsible for safety conditions on set. He is aware of the conditions on set and the day of the incident. He was present in the church when the fatal shot discharged.

EXHIBIT

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Witness No. 3: Sarah Zachry: Contact: Sarahbrianne97@gmail.com (505) 264-1702

Potential Testimony: Ms. Zachry was *Rust*'s prop master, responsible for acquiring, placing, and/or overseeing any props needed for the production, including prop firearms and ammunition. As prop master, she oversaw and supervised the armorer, Hannah Gutierrez-Reed, and was the only other person on set with responsibility for the storage and handling of firearms and ammunition. Along with Hannah Gutierrez-Reed, she was responsible for procuring firearms and ammunition from *Rust*'s third-party supplier.

Witness No. 4: Ryan Smith: Contact: rs@streamlineglobal.com

Potential Testimony: Mr. Smith was a Producer of the film *Rust* and was responsible for overseeing the overall production. He has knowledge of the various roles and responsibilities of members of the production. He will be able to provide testimony about Mr. Baldwin's contractual agreements, roles, and responsibilities for the film. He will be able to testify as to the extent and limitations of Mr. Baldwin's contract with the film with respect to hiring and supervising other cast and production members in their roles.

Witness No. 5: Det. Alexandria Hancock:

Contact: c/o Sergeant Alderete ealderete@santafecountynm.gov

Potential Testimony: Detective Hancock is a Santa Fe Sheriff's Detective who acted as the lead investigator on the case. She has knowledge of how the investigation proceeded, how evidence was gathered, and potential gaps in the investigation.

Witness No. 6: Det. Joel Cano:

Contact: c/o Sergeant Alderete

ealderete@santafecountynm.gov

Potential Testimony: Detective Cano is a Santa Fe Sheriff's Detective who acted as one of the investigators on the case. He has knowledge of how the investigation proceeded, how evidence was gathered, and potential gaps in the investigation that suggest Mr. Baldwin's innocence.

Witness No. 7: Robert Schilling: Contact: Shilling.robert@gmail.com

Proposed Testimony: Mr. Schilling was hired as an investigator for the state and was aware of deficiencies in the investigation, including leads that were not run down. He expressed his view that the investigation conducted by the SFSO over the course of more than a year could not be remediated.

PART III: DOCUMENTS

Document No. 1: Recording of 911 Call

The document is an audio-recording of the 911 call placed by Mamie Mitchell, the film’s script supervisor, immediately after the incident took place. Ms. Mitchell witnessed the incident from inside the church and was standing just a few feet away from where the gun went off. On the recording, Ms. Mitchell can be heard telling the 911 operator that two people were “accidentally shot” on a movie set. She is also heard saying that Dave Halls, the First Assistant Director, was “supposed to check the gun” and that “he’s responsible for [inaudible].”

Document No. 2: Prop Truck Warrant

On October 27, 2021, the Sante Fe Sherriff’s Office executed a warrant for the prop truck on the *Rust* movie set, which is where firearms and ammunition were stored throughout the production. The warrant contains numerous exculpatory statements from several witnesses, including a statement from camera operator Reid Russel (who said Mr. Baldwin “had been very careful” with the firearms) and a statement from Dave Halls, who said the incident “was not a deliberate act” and “he [Halls] should have checked all of [the rounds in the gun], but didn’t.”

Document No. 3: Church Search Warrant

On October 22, 2021, the Sante Fe Sherriff’s Office executed a warrant at the church on the *Rust* movie set where the incident took place. The warrant contains numerous exculpatory statements from the affiant, including a statement that Dave Halls “handed the gun to” Mr. Baldwin and “yelled, ‘Cold Gun,’ indicating the prop-gun did not have any live rounds.”

Document No. 4: PDQ Arm & Prop LLC Search Warrant

On November 30, 2021, the Sante Fe Sherriff’s Office executed a warrant at PDQ Arm & Prop LLC, the shop that supplied the rounds to the *Rust* set. The warrant states that Hannah Gutierrez-Reed, the film’s armorer, admitted that she “didn’t really check [the gun] too much” after lunch. The warrant also states that multiple live rounds were found on the set in the box of ammo that Gutierrez-Reed was pulling from, and that Gutierrez-Reed’s father had given Seth Kenney, the owner of PDQ, a can of live ammo that may match the live ammo found on the *Rust* set.

Document No. 5: New Mexico Occupational Health and Safety Report

This document is a report from the New Mexico Occupational Health and Safety Bureau, which conducted an investigation to determine whether the incident was caused by the failure of Rust Movie Productions LLC or its employees to implement proper workplace safety protocols. The

report demonstrates that Mr. Baldwin was not part of *Rust* Management—*i.e.*, the individuals responsible for hiring, scheduling, budgeting, and overseeing set safety. The report states that “Baldwin’s authority on the set” was limited to “approving script changes and actor candidates.”

Document Nos. 6(a)-6(j): Excerpts From Santa Fe Sherriff’s Office Report

These documents represent excerpts of reports from the Santa Fe Sherriff’s Office. Each report was prepared by the lead investigator, Det. Alexandria Hancock, or by another investigator, Joel Cano. The reports summarize interviews with several key witnesses which were conducted on the scene immediately following the incident and in the weeks that followed, including:

a. Joel Souza (director)

The report indicates that Souza, who was hit by the bullet that fired the day of the incident, recalled Hannah Gutierrez-Reed standing over him apologizing. He identified her as the person on set responsible for firearms, and that guns are to be checked by the armorer (Gutierrez-Reed) and the First Assistant Director (Halls).

b. Hannah Gutierrez-Reed (armorer)

The report indicates that Gutierrez-Reed stated that she was the armorer on set and that she loaded the firearm involved in the incident. Gutierrez-Reed stated that she handed the firearm off to Dave Halls before the incident. She also stated that the dummy rounds were provided to her by Seth Kenny, who, in turn borrowed them from someone else.

c. Sarah Zachry (prop master)

The report indicates that Zachry thought there were additional live rounds in the box of ammunition that Gutierrez-Reed used the day of the incident, and that Gutierrez-Reed had brought ammunition from another set she had worked on. Zachry identified the origin of some of the ammunition on the set as from Seth Kenny and Billy Ray.

d. Dave Halls (first assistant director)

The report indicates that Halls stated he was the safety coordinator and that the armorer was Hannah Gutierrez-Reed. He explained that he would routinely check firearms with the armorer, but that, the day of the incident, there was a 5-minute gap between when he checked the revolver at issue was empty and when Gutierrez-Reed returned, having loaded what he understood to be dummy rounds in the revolver. He recalled seeing three depressed primers.

e. Reid Russel (camera man)

The report states that Reid reported that Mr. Baldwin was “really safe” on set, including asking to move a child actor away from gunfire.

f. Jensen Ackles (actor)

The report indicates that Ackles explained that it is not the job of an actor to check their own firearms. Ackles also reported that he had not seen Baldwin handle firearms in a reckless manner on the set, and that, the time of the incident, he had heard Halyna Hutchins tell Mr. Baldwin to “show her the action” just before the fatal shot fired.

g. Ross Addiego (electrical)

The report indicates Mr. Addiego heard that Gutierrez-Reed say that the firearm was clear, but also that she did not check it after lunch and before the rehearsal began in the church.

The report also summarizes information obtained from the cell phones of Sarah Zachry and Seth Kenney:

h. Sarah Zachry cell phone report

Summary of text messages related to the incident found on Sarah Zachry’s phone.

i. Seth Kenney cell phone report

Summary of text messages related to the incident found on Seth Kenney’s phone.

The report also contains statements regarding the potential origin of the live ammunition on set:

j. Katya Luce

Summary of statements from Katya Luce related to statements she overheard by one of the wranglers on set.

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This document contains excerpts of text messages exchanged between Sarah Zachry, the film’s prop master, and Seth Kenney, the ammo supplier for the production. The messages reflect that the film’s armorer, Hannah Gutierrez-Reed, failed to follow proper safety protocols on the set of *Rust* and a previous film project.

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The transcript reflects that Mr. Halls was in charge of safety on the set of *Rust* and that he worked with armorer Gutierrez-Reed to ensure the safety of firearms used on set. He explains that Gutierrez-Reed loaded the firearm with dummies in between the time Halls checked it with her,

and that he did not check it thoroughly, though that had been his past practice. The transcript further reflects that no member of the case or crew could have anticipated the presence of live ammunition in the firearm or anywhere on the set.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'H. LeBlanc', written over a horizontal line.

Heather M. LeBlanc

Attorney at Law

Date Submitted: November 14, 2023

CERTIFICATE OF SERVICE

**Grand Jury Evidence Notice to District Attorney
and
Grand Jury Evidence Alert Letter**

DATE: November 14, 2023

2nd Judicial District Attorney
520 Lomas Blvd, NW
Albuquerque, NM 87102

INVESTIGATION RE: Alexander Rae Baldwin III

Hearing Date: November 16, 2023

Case No. D-101-GJ 2023-00008

Pursuant to Rule 5-102 NMRA, Section 31-6-11 NMSA, and *Jones v. Murdoch*, 2009-NMSC-002, 143 NM 473, the below-signed counsel certifies that the documents listed above were served upon the First Judicial District Attorney's Office by email on:

November 14, 2023

Date/Time



Heather M. LeBlanc, Attorney

Re: Grand Jury Alert Letter

Heather LeBlanc <heather@leblanclawnm.com>

Tue 11/14/2023 9:03 AM

To: ktm@morrisseylewis.com <ktm@morrisseylewis.com>; Jason J. Lewis <jjl@jillaw.com>

 1 attachments (417 KB)

Baldwin - Grand Jury Alert Letter - FINAL VERSION.pdf;

Good morning:

Resending to include Jason. Apologies for leaving him off the first email.

We are having issues with the exhibit attachments and will send that file separately shortly. Please let me know if you have any difficulties opening any of the attachments.

Sincerely,
Heather M. LeBlanc
(505) 331-7222

On Tue, Nov 14, 2023 at 9:02 AM Heather LeBlanc <heather@leblanclawnm.com> wrote:
|

EXHIBIT

3

Fwd: FW: Link to documents for alert letter

Heather LeBlanc <heather@bll.law>

Tue 11/14/2023 9:09 AM

To:Ktm <ktm@morrisseylewis.com>; Jason J. Lewis <jjl@jjllaw.com>

For some reason, I cannot get this to send from my primary email address, so I am sending from this one. Please continue to use heather@leblanclawnm.com for communications.

Sincerely,

Heather M. LeBlanc

<https://qe.sharefile.com/d-s719c7f27159e42e3b9cc84bcd0773dee>



Baldwin Alert Letter Documents.zip



Baldwin Alert Letter Documents.zip

470 MB

Last updated
11/14/2023 9:01AM

Creator: Michael Nosanchuk


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Details

Name
Baldwin Alert Letter Documents.zip

Size
469.71 MB

Last updated
11/14/2023 9:01AM

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EXHIBIT
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EXHIBIT 8

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

STATE OF NEW MEXICO,

Plaintiff,

v.

D-0101-GJ 2023-00008

ALEXANDER RAE BALDWIN, III,

Defendant.

ENDORSED
First Judicial District Court

DEC 1 2023 YW

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

**STATE'S MOTION TO EXCLUDE TARGET'S REQUESTED ELEMENTS
INSTRUCTIONS TO THE GRAND JURY**

COMES NOW the State of New Mexico, through Special Prosecutors Kari T. Morrissey and Jason J. Lewis, and submits its Motion to Exclude Target's Requested Elements Instructions to the Grand Jury. In support of its motion, the State submits the following:

INTRODUCTION

In his Grand Jury Evidence Alert letter dated November 14, 2023, the target requested the Grand Jury be alerted to two elements instructions: a subjective knowledge instruction and a proximate cause instruction. The target did not provide any factual statements or legal authority to justify the inclusion of these elements instructions, so the State will make its best efforts to anticipate target's arguments for including the elements, although additional arguments may be raised in the State's reply to the target's response to this motion, once it has seen the target's reasons and authority for alerting the grand jurors to these elements instructions.

I. TARGET HAS NO RIGHT TO OFFER ELEMENTS INSTRUCTIONS OR DEFINITIONS IN GRAND JURY PROCEEDINGS

As a preliminary matter, the target does not have a right at this stage in the process to determine what instructions and definitions are provided to the Grand Jury. In *Jones v. Murdoch (In re Grand Jury Presentation Concerning Jones)*, 145 N.M. 473, 2009-NMSC-002, the New Mexico Supreme Court completed a sweeping analysis of the rights of targets during Grand Jury proceedings. While acknowledging a target has rights at this stage, the rights are extremely limited. Specifically, the target has the right to alert the Grand Jury to directly exculpatory evidence. “However, to avoid disputes regarding what is argument and what is evidence, a letter from a target intended for delivery to the grand jury generally should focus on simply providing the grand jury with a factual and nonargumentative description of the nature of any tangible evidence and the substance of the potential testimony of any suggested witnesses, along with the names and contact information of the necessary witnesses who could provide the exculpatory information.” *Id.* at 485, ¶ 34.

Moreover, it is well established that it is within the purview of the prosecutor to “present specific evidence before a grand jury in a particular manner...and that the [target] does not have a clear legal right to have the grand jury investigation proceed in the same manner as a criminal trial with the full panoply of due process rights.” *Matter of Grand Jury Sandoval Cty.*, 1988-NMCA-007, ¶ 18, 106 N.M. 764, 768, 750 P.2d 464, 468. In this vein, the target is permitted to propose only that testimony and evidence that is directly exculpatory; circumstantial exculpatory evidence is not permitted. The State is required to present to the grand jury only exculpatory evidence that directly negates defendant's guilt. *See State v. Lara*, 110 N.M. 507, 1990-NMCA-075. “Direct evidence is evidence that, if believed, proves the existence of facts without inference or presumption.” *Id.* at 516, ¶ 32. Nowhere in any of these cases does a Court find that the target has

the right to comment on, propose, or much less require that certain jury instructions and definitions be provided to the Grand Jury.

This idea is further codified in the Court's rules. N.M.R. CRIM. P. DIST. CT. Rule 5-302.2 (D) provides:

"D. Instructions to grand jury.

(1) Elements and defenses. The prosecuting attorney who is assisting the grand jury shall provide the grand jurors with instructions setting forth the elements of each offense being investigated and the definitions of any defenses raised by the evidence.

(2) Other instructions. The prosecuting attorney shall provide the grand jury with other instructions that are necessary to the fair consideration by the grand jury of the issues presented."

Here, the Court makes clear that it is the province of the prosecuting attorney to provide Grand Jurors with the elements, definitions, and other instructions that are applicable to the offenses charged. The rule specifically fails to provide a mechanism for the target to comment on, object to, or otherwise participate in the process of determining what elements, instructions, and definitions to go to the Grand Jury. Indeed, if the target believes the instructions provided are somehow deficient, then he may and likely will file a motion to quash the indictment, presuming an indictment issues.

Despite the case law and court rules which clearly preclude the target from participating in the crafting of Grand Jury instructions and definitions, should the Court allow the target to participate in this case, the target's proposed elements are nevertheless inappropriate.

The proposed elements instructions at issue here are:

1. Mr. Baldwin requests that the Grand Jurors be alerted to the fact that the criminal negligence standard requires the prosecution to show that Mr. Baldwin had subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition.

2. Mr. Baldwin requests that the Grand Jurors be alerted that proximate cause is an element of causation, and that the element of proximate cause is negated where the negligence of a third party (*i.e.*, someone other than Mr. Baldwin) was the only significant cause of death or constitutes an intervening cause that broke the foreseeable chain of events.

As set forth below, the target's proposed subjective knowledge instruction is not supported by the law, while the proximate cause instruction is appropriate, although not as written by the target. Instead, the proximate cause Uniform Jury Instruction provided in N.M.R. CRIM. P. DIST. CT. Rule 14-134 should be given to ensure conformity and to avoid the risk of juror confusion.

II. SUBJECTIVE KNOWLEDGE PROPOSED ELEMENT INSTRUCTION

As the Court is aware, the target is charged with two counts of involuntary manslaughter pursuant to N.M.S.A. 1978, § 30-2-3 (B). Count I requires the grand jury to consider whether the target caused the death of Halyna Hutchins, committed in the commission of an unlawful act, to wit: negligent use of a deadly weapon, contrary to N.M.S.A. 1978 § 30-7-4 (a)(3). Alternative Count I requires the grand jury to consider whether the target caused the death of Halyna Hutchins, committed in the commission of a lawful act, which might produce death in an unlawful manner or without due caution and circumspection, contrary to N.M.S.A. 1978, § 30-2-3 (B).

The State acknowledges the criminal negligence standard requires the prosecution to show that the target had subjective knowledge of an actual risk of danger, although that standard is already built into the language of the standard UJI, discussed below. "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. A jury may not be instructed on involuntary manslaughter unless the evidence presented at trial shows the defendant could be found criminally negligent when engaging in the act causing the victim's death." *State v. Henley*, 148 N.M. 359, 364, 2010-NMSC-039, ¶ 17. The Court also stated:

Our case law has long integrated the requirement of subjective knowledge into the showing [****11] of criminal negligence required by our involuntary manslaughter statute. *See State v. Harris*, 1937- NMSC 046, 41 N.M. 426, 428, 70 P.2d 757, 758 (1937) (defining criminal negligence required for involuntary manslaughter as "so reckless, wanton, and willful as to show an utter disregard for the safety of [others]"); *see also Yarborough*, 1996 NMSC 68, P 20, 122 N.M. 596, 930 P.2d 131 (noting, in a vehicular homicide case, that to find criminal negligence, "[the jury] must find that [the defendant] drove with willful disregard of the rights or safety of others and in a manner which endangered any person or property" (quoting NMRA 14-241 (1996))); *Romero*, 2005 NMCA 60, P 17, 137 N.M. 456, 112 P.3d 1113 (finding that an involuntary manslaughter jury instruction should have been given where the defendant presented evidence that he was acting lawfully in selfdefense [sic] but "without due caution or circumspection due to" the victim's medical condition, of which the defendant was aware); *cf. Lucero*, 2010 NMSC 11, P 14, 147 N.M. 747, 228 P.3d 1167 (stating that a jury instructed on involuntary manslaughter is not also instructed on accident, as accident requires proof of "usual and ordinary caution and without any unlawful intent," in contrast to the required showing of criminal negligence for an [****12] involuntary manslaughter instruction (internal quotation marks and citation omitted) (emphasis omitted)).

Id.

The target's proposed elements instruction requiring that the target had subjective knowledge of an actual risk that the firearm placed in his had had been loaded with live ammunition is an unprecedented departure from the elements of proof the law and rules require. The Supreme Court has adopted two rules which set forth the elements necessary to establish the target's criminal culpability as charged: N.M.R. CRIM. P. DIST. CT. Rule 14-231, Involuntary Manslaughter; essential elements and Rule 14-133, Negligence, defined.

Rule 14-231, Involuntary Homicide, establishes the foregoing elements and use notes:

14-231. Involuntary manslaughter; essential elements.¹

For you to return a true bill on the charge of involuntary manslaughter [as charged in Count _____],² you must find probable cause as to each of the following elements of the crime:

1. _____ (name of defendant) _____ (describe defendant's act);
2. _____ (name of defendant) should have known of the danger involved by _____'s (name of defendant) actions;
3. _____ (name of defendant) acted with a willful disregard for the safety of others;

4. _____'s (*name of defendant*) act caused the death of _____ (*name of victim*);
5. This happened in New Mexico on or about the _____ day of _____, _____.

USE NOTES

1. This instruction is used in all involuntary manslaughter prosecutions.
2. Insert the count number if more than one count is charged.

Under Element No. 1 the State would insert the words, “negligently used a firearm” and include the following definition of “negligence” and “deadly weapon” for the Grand Jury’s use.

14-133. "Negligence" and "recklessness"; defined.¹

For you to find that the defendant [acted]² [recklessly] [with reckless disregard] [negligently] [was negligent] [_____]³ in this case, you must find that the defendant acted with willful disregard of the rights or safety of others and in a manner which endangered any person or property.⁴

USE NOTES

1. For use when "negligence", "reckless", "recklessly", "knew or should have known" or similar term or phrase is an element of the crime charged. This instruction should not be given with any elements instruction which already adequately defines the concept of a defendant's criminal negligence set forth by the Supreme Court. *See for example State v. Yarborough*, 1996-NMSC-068, 122 N.M. 596, 930 P.2d 131, and *Santillanes v. State*, 115 N.M. 215, 849 P.2d 358 (1993).
2. Use only applicable alternative.
3. Set forth the term or terms used in the elements instruction (or statute if no elements instruction exists) for criminal negligence if the previous alternatives are not used in the essential elements instruction of a "criminal negligence" offense.
4. If the statutory offense identifies some injury other than to a person or the property of others, set forth statutory language.

Thus, the subjective knowledge analysis the Supreme Court wishes jurors to consider is already included in the UJI; no additional or modified language is warranted. The analysis for the alternative count, Involuntary Manslaughter committed via a lawful act without due caution and circumspection, is the exactly the same – and consequently no modification to the language is necessary.

The New Mexico Supreme Court adopted the foregoing rules with full knowledge and understanding of the caselaw, and consequently built into the UJIs the elements that apply to each

of the named offenses. None of the UJIs (or even caselaw reviewing the UJIs) require or even suggest that an individual charged with involuntary manslaughter committed via negligent use of a deadly weapon had to have subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition. New Mexico's lawbooks are filled with defendants charged with and convicted of involuntary manslaughter who all said some version of the same thing: that they did not know there was a bullet in the gun. The common fact they share with target is that they, too, failed to inspect the gun prior to pointing it at another human and pulling the trigger, resulting in death.

Target's request for the subjective knowledge instruction also assumes that the factual basis of negligent act was failing to check the firearm for live rounds. Failing to check the firearms for live rounds was one of, but not the only way, in which the target was negligent. The State is under no obligation to disclose to the target the theory of its case and consequently declines to state here all of the ways in which it believes the target was negligent. Suffice it to say whether or not the target had subjective knowledge of an actual risk that the firearm placed in his hand had been loaded with live ammunition has nothing to do with the other ways in which the State intends to show the target negligently handled a firearm resulting in death.

This, too, highlights another reason why the Court should not consider the target's proposed elements instruction at this time. Until the State has set forth the entirety of its factual evidence before the Grand Jury, the Court cannot know whether the jurors should or should not have been alerted to specific instructions and definitions. To consider the instructions at this stage would require the State to disclose its anticipated evidence and theory of the case not only to the Court but also to the target. Not only does this put the cart before the horse, but this would constitute an intrusion by the Court into a function that is purely within the purview of the

prosecutors, and would require the disclosure of the State's legal strategy before the Grand Jury convenes. If the target is dissatisfied with the elements instructions and definitions given to the Grand Jury, the target has a remedy and that remedy is to file a motion to quash any indictment that might issue after the Grand Jury process is complete – not before.

Finally, were the Court to adopt the elements instruction as proposed by the target, the State is concerned the standard of proof for an involuntary manslaughter charge would be too high, and more akin to second degree murder charge. Indeed, if the target had actual knowledge of the risk that the firearm was loaded with live ammunition, yet still pointed the gun in the direction of another living person and pulled the trigger, his exposure under the law would increase significantly. "To convict Defendant of second-degree murder, the State was required to prove Defendant killed Shamika White (Victim), Defendant knew that his 'acts created a strong probability of death or great bodily harm' to Victim, and '[D]efendant did not act as a result of sufficient provocation[.]' UJI 14-210 NMRA (2010) (describing the elements of second-degree murder); see NMSA 1978, § 30-2-1(B)(1994) (defining second-degree murder)." *State v. Jackson*, 2019 N.M. App. Unpub. LEXIS 496, *2, 2019 WL 13156000. If the Court accepts the target's proposed elements instruction that the target had to have been aware of an actual risk that the firearm was loaded with live ammunition, the target would then necessarily have been aware that by pointing the gun at another person and pulling the trigger, his acts created a strong probability of death or great bodily harm – and therefore would be guilty of second degree murder, and not involuntary manslaughter. For these reasons, the target's proposed instruction should be denied.

III. Proximate Cause Elements Instruction

The State intends to submit N.M.R. CRIM. P. DIST. CT. Rule 14-134, "Proximate Cause", defined, to the Grand Jurors, as adopted by the Supreme Court, without the changes submitted by

the target, but modifying the standard of proof to be probable cause, rather than beyond a reasonable doubt. As to the target's proposed modification on this element, the State incorporates its previous arguments that the target has no right to suggest modifications to the elements instructions, pursuant to *Jones v. Murdoch (In re Grand Jury Presentation Concerning Jones)*, 145 N.M. 473, 2009-NMSC-002 and N.M.R. CRIM. P. DIST. CT. Rule 5-302.2 (D).

Nevertheless, should the Court decide to entertain the target's proposed modification, the State objects on the grounds that the proposed modification is unsupported by the rules adopted by the Supreme Court and could lead to jury confusion. The rule as adopted states:

14-134. "Proximate cause"; defined.¹

In addition to the other elements of the crime of _____ (*name of crime*) as set forth in instruction number _____,² you must find probable cause as to each of the following elements:

1. _____ (*name of victim*) was _____ (*describe injury or harm*);
2. The injury or harm was the foreseeable result of the defendant's act; and
3. The act of the defendant was a significant cause of the injury or harm.

The defendant's act was a significant cause of the injury or harm if it was an act which, in a natural and continuous chain of events, uninterrupted by an outside event, resulted in the injury or harm and without which the injury or harm would not have occurred.

[There may be more than one significant cause of the injury or harm. If the acts of two or more persons significantly contribute to the cause of the injury or harm, each act is a significant cause of the injury or harm.]³

USE NOTES

1. This instruction should be used in cases in which causation is an issue. It is not to be used in homicide cases. *See* Instructions 14-251 and 14-252.
2. Insert here the number assigned by the court to the elements instruction for the named offense.
3. Use the bracketed language if there is evidence that the acts of more than one person contributed to the injury or harm to the victim.

The target's proposed language, "the element of proximate cause is negated where the negligence of a third party (i.e., someone other than [the target]) was the only significant cause of

death or constitutes an intervening cause that broke the foreseeable chain of events” could confuse jurors into believing that if another individual was a significant cause of death, that the target would be relieved of responsibility. Comparatively, the rule as adopted by the Supreme Court makes clear that there can be more than one individual whose actions were a significant cause of death and that all parties whose actions were a significant cause of death share culpability. There are no compelling reasons to deviate from the instruction as adopted by the Court, and because any attempt by the target to modify the elements instructions is an unlawful intrusion into the prosecutor’s purview in assisting the Grand Jury, the State requests the Court reject the target’s proposed modification.

CONCLUSION

For the reasons stated herein, the State respectfully requests the Court enter an order denying the target’s proposed elements instructions.

RESPECTFULLY SUBMITTED,

/s/ Jason J. Lewis

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I hereby certify that a true and correct copy of the foregoing pleading was emailed to opposing counsel this 1st day of December, 2023.

/s/ Jason J. Lewis

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