

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,  
Plaintiff,

v.

No. D-101-CR-2024-00013

ALEXANDER RAE BALDWIN,  
Defendant.

**CORRESPONDENCE TO CLERK OF COURT**

THIS MATTER came before the Court on the Court's own motion. Being otherwise fully advised, THE COURT FINDS, CONCLUDES, AND ORDERS:

IT IS HEREBY ORDERED that the Clerk of the Court shall file the enclosed docket records into the above-captioned case. The enclosed docket records concern pre-indictment proceedings from the matter styled *Plaintiff State of New Mexico v. Target Alexander Rae Baldwin* (D-101-GJ-2023-00008). The enclosed docket records are no longer confidential pursuant to Local Rule LR1-303(A) NMRA. *See id.* ("Grand jury proceedings, including but not limited to subpoenas for witnesses, docket records, and returns of service, are confidential until an indictment is filed with the court or, if the court orders that an indictment be sealed until arrest, until the indictment is unsealed on arrest. . . .").

**IT IS SO ORDERED.**

  
MARV MAKLOWE SOMMER  
DISTRICT COURT JUDGE  
DIVISION VIII

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date of acceptance for e-filing a true and correct copy of the foregoing was e-served on counsel registered for e-service in this matter as listed below.

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

FIRST JUDICIAL  
DISTRICT COURT  
2023 OCT 30 PM 2: 31



**STATE OF NEW MEXICO,**

**Plaintiff,**

v.

**D-0101-GJ 2023-00008**

**ALEXANDER RAE BALDWIN,**

**Defendant.**

**STATE'S OPPOSED EXPEDITED MOTION FOR SCHEDULING ORDER  
ESTABLISHING DEADLINE FOR BORT JONES LETTER  
AND FOR HEARING ON DEFENDANT'S REQUESTED GRAND JURY EVIDENCE**

**COMES NOW** the State of New Mexico, through Special Prosecutors Kari T. Morrissey and Jason J. Lewis, pursuant to N.M.S.A. 1978, §31-6-11 and N.M.R. CRIM. P. DIST. CT., Rule 5-302.2, and respectfully requests this Court: 1) enter a scheduling order which establishes a reasonable deadline for submission of the target's requested evidence and witnesses and 2) schedule a hearing prior to the grand jury presentation date of November 16, 2023, to hear arguments regarding the target's requested grand jury evidence. As grounds for this motion, the State submits the following:

1. On January 31, 2023, Alexander Rae Baldwin, III, the target, was charged with two counts (in the alternative) of involuntary manslaughter. The State on April 21, 2023, dismissed without prejudice the charges against Mr. Baldwin less than two weeks before the scheduled preliminary examination was to begin on May 3, 2023.

2. The State began sharing discovery with Mr. Baldwin and his attorneys on or about March 9, 2023. Mr. Baldwin and his attorneys have had access to the continuously updated discovery since March 9, 2023, and have conducted their own extensive investigation into the allegations.

3. Mr. Baldwin's counsel, Luke Nikas, flew to Santa Fe, NM and met with the special prosecutors on April 3, 2023, to outline the evidence they claim should result in an abandonment of the charges against the target. Shortly thereafter, defense counsel provided evidence to the special prosecutors that indicated additional investigation should be performed on the functionality of the firearm used in the shooting of the alleged victims in this case.

Consequently, the case against Mr. Baldwin was dismissed without prejudice and the State conducted additional investigation and testing of the firearm. The investigation has now concluded, and defense counsel are in possession of the full ballistics report from the State's expert witness.

4. The special prosecutors notified defense counsel of their intention to refile charges on October 5, 2023, and served defense counsel with a target notice on October 25, 2023. In response to the target notice, defense counsel stated that it was their intent to "send [the State] an alert letter setting forth certain evidence we believe you are required to present to the grand jury, including witnesses we believe you are required to call" and further requested an adjournment of the November 16 grand jury date "to ensure that you can coordinate appearance of the witnesses we identify and review the voluminous alert letter we will be submitting." N.M.R. CRIM. P. DIST. CT., Rule 5-302.2 (B)(3)(c) provides that 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. Given the target's intention to identify witnesses to be called to testify at the grand jury and the target's intention to submit a "voluminous" alert letter, the State requested

defense counsel agree to provide the defendant's requested grand jury evidence sooner than forty-eight (48) hours prior to the grand jury hearing to ensure that all requested evidence could be adequately reviewed by the state and the Court and so that travel plans and accommodations could be made for any additional witnesses necessary for the grand jury hearing.

5. The State requested the witnesses be identified and the alert letter be provided by November 10, 2023. Defense counsel notified the state on October 27, 2023, that they will not agree to a date prior to November 14, 2023 (forty-eight hours prior to the hearing), to provide the defendant's proposed exculpatory evidence and witnesses. Defense counsel also requested that the grand jury date of November 16, 2023, be postponed.

6. The special prosecutors declined to postpone the current grand jury presentation date given that two years have passed since the date of the incident, the target has been in possession of a large amount of discovery for nearly eight months, has had two years to conduct his own investigation and his attorneys began to prepare for a preliminary hearing in May 2023 that was vacated due to the filing of a *nolle prosequi*. Defense counsel does not need additional time to submit a request for the presentation of directly exculpatory evidence to the State in advance of the grand jury proceeding.

7. N.M.R. CRIM. P. DIST. CT., Rule 5-302.2 (D) provides, "The times set forth in this rule may be changed by the grand jury judge on written motion demonstrating that an extension is necessary in order to assure compliance with the requirements of this rule."

8. The target is in a unique position as he and his attorneys have had access to nearly all the discovery in this case for the last eight months. Mr. Baldwin's attorneys met with the special prosecutors for approximately four hours in April 2023 and explained in painstaking detail all the investigation they conducted and the evidence they believed warranted a dismissal of the charges

against the target. Counsel for the target are in a better position than all other similarly situated targets, as they know and understand the evidence against their client, have conducted their own investigation and can easily provide a written request for exculpatory evidence well in advance of the grand jury hearing. The State is concerned defense counsel intends to intentionally withhold the requested exculpatory evidence until exactly forty-eight hours prior to the grand jury to cause the postponement of the grand jury proceeding despite the fact that they are well aware of all possible directly exculpatory evidence today.

9. The special prosecutors are aware of the requirement that directly exculpatory evidence be presented to the grand jury and intend to conduct the grand jury hearing in accordance with the requirements of Rule 5-302.2. Many of the witnesses in this case do not reside in New Mexico and need to travel to New Mexico to testify before the grand jury. The state has two witnesses travelling to New Mexico to provide testimony to the grand jury on November 16, 2023. The special prosecutors are concerned about wasting public funds on travel arrangements for witnesses only to have the grand jury proceeding postponed after a hearing on the defense request for exculpatory evidence at the eleventh hour.

10. The special prosecutors want to work in conjunction with defense counsel to ensure all directly exculpatory evidence is presented to the grand jury. Defense counsel has been in possession of the discovery in the case and have had two years to conduct their own exhaustive investigation. The State respectfully requests this Court order that an alert letter including all exculpatory evidence and witnesses be provided by the target by close of business November 10, 2023. The State further requests a hearing be scheduled on or about November 14, 2023, to ensure that the State and the Court can carefully review the target's alert letter including the

requested evidence and make decisions concerning the inclusion of evidence at the grand jury presentation prior to the grand jury presentation date of November 16, 2023.

RESPECTFULLY SUBMITTED,

/s/ Kari T. Morrissey

Kari T. Morrissey

Jason J. Lewis

Special Prosecutors for the State of New Mexico

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I hereby certify that a true and correct copy of the foregoing pleading was emailed to opposing counsel this 30<sup>th</sup> day of October 2023.

/s/ Kari T. Morrissey

Kari T. Morrissey

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

2023 NOV -1 AM 9: 31

STATE OF NEW MEXICO,

**Plaintiff,**

vs.

**D-0101-GJ 2023-00008**

ALEXANDER RAE BALDWIN,

**Defendant.**

**EXPEDITED MOTION TO PERMIT STATE TO  
CONDUCT VOIR DIRE OF GRAND JURY VENIRE**

**COMES NOW** the State of New Mexico, through special prosecutors Kari T. Morrissey and Jason J. Lewis, and moves the Court for entry of an order permitting the special prosecutors to conduct a limited voir dire of the grand jury venire. In support of this motion, the State submits the following:

1. The target, Alexander “Alec” Rae Baldwin, III, is a well-known movie and television actor who was in Santa Fe, New Mexico filming the movie “Rust” when the incident that is the subject of the grand jury presentation occurred.

2. Because the incident occurred on a movie set and involved a well-known actor, the incident has been the subject of hundreds, if not thousands, of local, national, and international news stories.

3. The incident has been covered by the Santa Fe New Mexican, the Albuquerque Journal, and the three major local television news stations, KOB, KOAT, and KRQE, resulting in



a significant amount of information - some of it inaccurate or incomplete - being made available to prospective jurors.

4. As a matter of fairness to both the State and the target, the State requests to conduct a limited voir dire of prospective jurors to ensure that exposure to news stories or other information about the target has not biased any juror for or against either party.

5. The State proposes the following questions, with follow-up, as appropriate:

a. Have you seen any information about the shooting of Halyna Huthcins and Joel Souza on the set of the movie "Rust" in the media (online or paper) or on social media?

b. If so, was there anything about the media coverage that you saw or read that would cause you to be unable to be fair and impartial in the determination of probable cause in this case?

c. Do you know who Alec Baldwin is? How many of you have seen a movie or TV show that he was in? Is there anything that you've seen or read that would prevent you from being fair or impartial to Mr. Baldwin?

d. Was there anything about the media coverage that you saw or read that caused you to form any opinions about whether or not Mr. Baldwin should or should not be criminally prosecuted?

e. Have you posted anything about his incident on the internet or responded online to any media or social media stories about the incident?

f. Is there any reason you cannot be fair to the target and fair to the State when making a determination of probable cause in this case?

6. The State sought opposing counsel's position on this motion but did not receive a response as of the time of the filing of this motion.

For the foregoing reasons, the State respectfully requests the Court enter an order permitting it to conduct a limited voir dire of the grand jury venire consisting of the questions, and appropriate follow up questions, identified in this motion.

RESPECTFULLY SUBMITTED,

/s/ Kari T. Morrissey

Kari T. Morrissey

Jason J. Lewis

Special Prosecutors for the State of New Mexico

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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 November 2023.

/s/ Kari T. Morrissey

Kari T. Morrissey

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

SANTA FE COUNTY  
FILED IN THE CLERKS OFFICE  
OF DISTRICT COURT



STATE OF NEW MEXICO

November 2, 2023

**Plaintiff,**

v.

D-101-GJ-2023-00008

**ALEXANDER RAE BALDWIN,**

**Respondent.**

**NOTICE OF INTENT TO RESPOND TO STATE'S EXPEDITED MOTION TO PERMIT  
STATE TO CONDUCT VOIR DIRE OF GRAND JURY VENIRE**

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*Counsel for Target*

Alexander R. Baldwin III, by and through undersigned counsel, respectfully submits this notice of intent to respond. Target and his counsel are in receipt of the State's Expedited Motion to Permit State to Conduct Voir Dire of Grand Jury Venire, filed on November 1, 2023. Undersigned counsel are aware of the time-sensitive nature of this matter and will submit a Response for the Court's consideration by Tuesday, November 3, 2023.

Date: November 1, 2023

Respectfully submitted,

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*Counsel for Target*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 1, 2023, a true and correct copy of the foregoing notice was emailed to opposing counsel.

/s/ Heather M. LeBlanc  
Heather M. LeBlanc

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

SANTA FE COUNTY  
FILED IN THE CLERKS OFFICE  
OF DISTRICT COURT

November 2, 2023

STATE OF NEW MEXICO

**Plaintiff,**

v.

D-101-GJ-2023-00008

**ALEXANDER RAE BALDWIN,**

**Respondent.**

**NOTICE OF INTENT TO RESPOND TO STATE'S OPPOSED EXPEDITED MOTION  
FOR SCHEDULING ORDER ESTABLISHING A DEADLINE FOR BORT JONES  
LETTER AND FOR HEARING ON DEFENDANT'S  
REQUESTED GRAND JURY EVIDENCE**

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*Counsel for Target*

Alexander R. Baldwin III, by and through undersigned counsel, respectfully submits this notice of intent to respond. Target and his counsel are in receipt of the State's Opposed Expedited Motion For Scheduling Order Establishing a Deadline For Bort Jones Letter and For Hearing on Defendant's Requested Grand Jury Evidence, filed on October 30, 2023. The State's motion contains numerous inaccuracies that are material to the Court's determination of this issue. Undersigned counsel are aware of the time-sensitive nature of this matter and will submit a Response for the Court's consideration by Friday, November 3, 2023.

Date: October 31, 2023

Respectfully submitted,

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*Counsel for Target*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 31, 2023, a true and correct copy of the foregoing notice was emailed to opposing counsel.

/s/ Heather M. LeBlanc  
Heather M. LeBlanc





2023 NOV -3 PM 4: 49

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-GJ- 2023 -00008  
Judge T. Glenn Ellington

**ALEC BALDWIN'S OPPOSITION TO THE STATE'S EXPEDITED MOTION FOR SCHEDULING  
ORDER ESTABLISHING [A SHORTENED] DEADLINE FOR *BORT JONES* LETTER AND FOR  
HEARING ON BALDWIN'S REQUESTED GRAND JURY EVIDENCE**

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*Counsel for Alec Baldwin*

Alec Baldwin respectfully requests that the Court deny the State's Motion For Scheduling Order Establishing [A Shortened] Deadline For Bort Jones Letter And For Hearing On Baldwin's Requested Grand Jury Evidence. Baldwin also requests that the Court adjourn the grand jury date, currently scheduled for November 16, 2023, to allow him adequate time to prepare, and the State to review, his Bort Jones Letter.

### INTRODUCTION

This prosecution arises out of a tragic accident that took place on October 21, 2021, on a movie set near Santa Fe. While the cast and crew were rehearsing a scene for the Western film *Rust*, Baldwin was given a firearm by a person who was responsible for ensuring that the firearm was properly loaded with dummy rounds and safe to handle. But the firearm was not safe to handle. It contained a live round—something that was both unfathomable and indiscernible to anyone in Baldwin's position—that was discharged and hit Halyna Hutchins, the film's cinematographer, and Joel Souza, the film's director. Hutchins died of her wound.

In January 2023, after a long and flawed investigation, the State charged Baldwin with involuntary manslaughter in connection with Hutchins' death. The charges violated the constitution, ignored the facts, and contravened basic principles of New Mexico criminal law. The case quickly unraveled, and both the Special Prosecutor and the District Attorney resigned from the case. The new Special Prosecutors, Kari Morrissey and Jason Lewis, dismissed the charges in April 2023. Nearly seven months went by, during which the Special Prosecutors were purportedly conducting witness interviews, expert testing, and document collection. The Special Prosecutors did not provide *any* of that information to Baldwin. Not a single page. In fact, they gave every indication that no further charges would be filed. Then, abruptly, the Special Prosecutors offered Baldwin a plea deal to a minor offense, then inexplicably retracted the offer before the deadline

they provided, and rushed into this grand jury proceeding, which they are attempting to complete less than one month after deciding to pursue charges.

The Special Prosecutors now seek to shorten Baldwin's 48-hour deadline to submit a grand jury alert letter—after dragging the investigation for over two years, and after creating the unnecessary time crunch about which they now complain. They assert three key grounds for their motion: that they have provided Baldwin continuous access to their investigative file since April, so Baldwin has had all of the potential exculpatory evidence in his possession for months; unlike Baldwin, most targets do not have substantial evidence in their possession before submitting an alert letter; and the Special Prosecutors believe Baldwin will intentionally submit his alert letter 48 hours before the grand jury convenes to cause a delay of the grand jury date.

None of these arguments has merit. New Mexico law, N.M. R. CRIM. P. DIST. CT. 5-302.2(B), expressly sets the 48-hour deadline and does not give the State or the Court any discretion to shorten it. Although the Special Prosecutors repeatedly pay lip service to treating Baldwin the same as any other similarly situated target, their actions have said otherwise since the beginning. Here, on this issue, the Special Prosecutors acknowledged when sending the target notice to Baldwin that they have *never* seen an alert letter that did not contain the 48-hour deadline. The target notice they sent to Baldwin is, by their admission, the first one they have *ever* seen that did not contain the 48-hour deadline. And, disturbingly, the Special Prosecutors also sent a target notice to co-target Hannah Gutierrez-Reed on the same day as Baldwin, yet *her* letter *contained* the 48-hour deadline.

Moreover, the Special Prosecutors have not provided Baldwin with *any* information they purportedly obtained since April. Literally none. Their representation otherwise is false. And regardless, their argument that most targets do not have access to significant exculpatory evidence

before submitting an alert letter only further undercuts the Special Prosecutors' motion. The fact that most targets have limited information means that they do not need significant time to submit an alert letter—yet the law still expressly gives them until 48 hours before the grand jury date to do so. The fact that Baldwin currently has access to significant exculpatory evidence necessarily means that he needs more time to submit that evidence—not less.

Baldwin proposed a common-sense solution to this issue: adjourn the grand jury date and agree upon a reasonable schedule with the State to ensure that Baldwin has adequate time to submit, and the State has adequate time to review, an alert letter identifying exculpatory information. The State has already delayed this case by over two-years; there is no legal or practical reason for unreasonably compressing the grand jury process, and doing so will threaten Baldwin's right, recognized by the New Mexico Supreme Court in *Jones v. Murdoch*, 2009-NMSC-002, 145 N.M. 473, 200 P.3d 523, to have the State present all exculpatory evidence to the grand jury. But the State refused to even speak with Baldwin's counsel to discuss these issues, and instead filed this motion seeking the unprecedented relief of shortening Baldwin's statutory right to submit an alert letter 48 hours before the grand jury date.

Baldwin recognizes that requesting an adjournment, in the alternative, may be an unusual remedy. But it is warranted here under the standards set forth in *Jones*, where the Supreme Court recognized that a key function of the grand jury judge is to ensure the grand jury operates independently and based on complete information, because “[u]nless the grand jury is empowered to consider all lawful, relevant, and competent evidence bearing on the issue of probable cause, the grand jury cannot perform its historical role of determining whether those accused of wrongdoing by the government should suffer the burdens of a criminal prosecution.” *Jones*, 2009-NMSC-002, ¶ 2, 145 N.M. at 475, 200 P.3d at 525. The Special Prosecutors' conduct—misleading

the defense, proceeding on an expedited timeline considering the volume of evidence the State and target have within their possession, and seeking to shorten Baldwin's time to present an alert letter without any legal support—gives good cause to believe the State will withhold relevant information from the grand jury. The best way to mitigate that threat is to adjourn the grand jury date and set a schedule that will facilitate compliance with *Jones*.

The Court should reject the State's request to shorten Baldwin's 48-hour deadline or, in the alternative, should hold a conference with the parties to discuss and implement a reasonable schedule for presenting this case to the grand jury at an adjourned date.

## **BACKGROUND**

This is the latest in a series of misguided actions by the State, which has, at every turn, denied Baldwin basic protections afforded to criminal defendants in New Mexico. There has been no allegation that Baldwin intended harm, nor that he had any reason to believe there was a live round on set. Baldwin, like Hutchins and Souza, trusted the firearm professionals on set to ensure the firearm was safe to use. None of them would have commenced the scene at issue if they had any reason to believe the gun was unsafe.

### **A. The First Prosecution**

Nevertheless, on January 31, 2023, more than a year after the fatal incident, the District Attorney of Santa Fe, Mary Carmack-Altwies, and the unconstitutionally appointed special prosecutor and then-sitting legislator, Andrea Reeb, filed a criminal complaint charging Baldwin with involuntary manslaughter and seeking a firearm enhancement that was barred by the ex post facto clause. Carmack-Altwies and Reeb launched a vicious press campaign, vilifying Baldwin and disparaging his counsel in the press every time Baldwin raised valid constitutional challenges to the prosecution. By March 30, 2023, both Carmack-Altwies and Reeb had resigned from the

case in the face of constitutional and statutory bars on their service. They were replaced by the current prosecution team—Kari Morrissey and Jason Lewis (the “Special Prosecutors”).

By that point, it was apparent that the investigation suffered from severe procedural failings, such as the failure to follow tips and leads, failures to secure the crime scene, failures to interview key witnesses, and destructive testing of key evidence. In fact, the District Attorney’s investigator, Robert Schilling, later resigned from the case because of the State’s misconduct, writing to the Special Prosecutors and the District Attorney that “The conduct of the Santa Fe County Sheriff’s Office during and after their initial investigation is reprehensible and unprofessional to a degree I still have no words for. Not I or 200 more proficient investigators than I can/could clean up the mess delivered to your office in October 2022 (1 year since the initial incident...inexcusable).” (Ex. 1 (*State v. Gutierrez*, D-10 I-CR-2023-00040, Jun. 22, 2023 Supp. Mtn. to Dismiss Second Amen. Inf. and Mtn. to Dismiss Third Amend. Inf.) at Ex. A.) This email had come to light only because Schilling inadvertently copied the wrong “Jason” on the email—Gutierrez-Reed’s counsel, Jason Bowles, rather than Special Prosecutor Jason Lewis. Morrissey attempted to sweep this disturbing disclosure under the rug, telling Bowles to delete the email: “Rob’s email to you was intended for Jason Lewis. It was an inadvertent disclosure. Please delete it. Thank you.” (*Id.* at Ex. B.)

On April 12, 2023, shortly after the new Special Prosecutors were appointed, they allowed Baldwin to make a presentation to them based on evidence the State had publicly disclosed earlier that year.<sup>1</sup> Among some of the highlights in that evidence: a gun with defective, modified, internal components that would make it more likely to accidentally discharge; industry standards setting

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<sup>1</sup> The Special Prosecutor’s motion states that the presentation was made on April 3, 2023. The meeting was actually held on April 12, 2023.

forth clear roles and responsibilities on set that vindicated Baldwin; an FBI report showing that the FBI intentionally destroyed the functionality of the gun in their testing after receiving express approval to do so from the State; and findings from the New Mexico OSHB investigation concluding that Baldwin did not have responsibility for set safety or control over the budget for the film and that those who did failed to perform their jobs (yet haven't been prosecuted).

Following that meeting, and after the exchange of additional information related to the firearm that discharged the fatal shot, on April 21, 2023, the Special Prosecutors dismissed the charges against Baldwin.

### **B. The Second Prosecution**

The Special Prosecutors state in their motion that Baldwin received “continuously updated discovery” for the last six months. (Mot. ¶ 2.) That is false. Baldwin has not received a single item of discovery from the State during that time. This is not surprising—he was not a defendant, had no reason to believe charges would be reinstated, and had no reason to receive such material.

On October 5, 2023, Morrissey informed Baldwin’s counsel in writing that the State intended to seek an indictment against him, but that, before doing so, it was offering Baldwin a plea deal identical to that accepted by Dave Halls—that is, a plea to a petty misdemeanor offense—with a deadline of October 27, 2023, to accept. In that communication, Morrissey said that the State had done a further investigation, including testing on the firearm that included both an initial report and also supplemental testing and ballistics analyses. Morrissey did not provide any of this information to Baldwin. Ten days *before* the October 27 deadline, the Special Prosecutors retracted their plea offer and abruptly informed counsel that they would proceed to a grand jury.

On October 25, 2023, the Special Prosecutors served a target notice on Baldwin, in which they omitted the standard 48-hour timeline for the target to provide a grand jury alert letter, even

though they simultaneously acknowledged *never* having seen that provision omitted before. (*See* Ex. 2 (Oct. 25, 2023 email from K. Morrissey to Baldwin’s counsel) at 2-3 (“Every target notice I have ever seen in NM has a sentence that indicates that the target must notify the prosecution of potential witnesses, questions or exhibits 48 hours prior to the grand jury date.”); *see also* 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.”).) After acknowledging that she had “eliminated” this standard provision from the target letter, Morrissey stated that she was “happy to work with [Baldwin’s counsel] in this regard and will fully consider any requests” made by Baldwin’s counsel. (*Id.* at 3.) Despite indicating that she “intend[ed] to ask the grand jury judge” to shorten the deadline for Baldwin to submit an alert letter (from November 14 to November 10), Morrissey simultaneously asked whether that was “agreeable” and to “[I]et me know your thoughts.” (*Id.*)

Noting the volume of evidence and number of witnesses, Baldwin responded that, at a minimum, he should be given the time to respond that he is entitled to receive under New Mexico law. (*See id.* at 1.) In addition, Baldwin proposed to adjourn the grand jury date to allow the Special Prosecutors sufficient time to “review the voluminous alert letter we will be submitting” and to “ensure this process is done properly the first time around.” (*Id.*) Baldwin considered this a reasonable and fair approach for everyone, since a prosecuting attorney is required to “alert the grand jury to all lawful, competent, and relevant evidence that disproves or reduces a charge or accusation or that makes an indictment unjustified and that is within the knowledge, possession, or control of the prosecuting attorney,” there is a significant “volume of evidence in this case,” and the “consequences of any failure to present exculpatory evidence” are severe. (*Id.*; *see also*



N.M. R. CRIM. P. DIST. CT. 5-302.2(B)(1).) Baldwin therefore asked Morrissey if she was “willing to discuss a reasonable schedule for this process.” (Ex. 2 at 1.)

Despite her purported willingness to “work with [Baldwin’s counsel] in this regard” and discuss a schedule that was “agreeable” to Baldwin, Morrissey immediately dismissed Baldwin’s request out of hand. She was not willing to discuss Baldwin’s proposal at all. Instead, she stated that Baldwin was not “entitled to additional time to submit requests that certain evidence/witnesses be presented to the the [sic] grand jury,” declared the State’s intent to file a motion seeking to shorten the time for Baldwin to provide exculpatory material, and asserted—despite having just admitted that her attempt to shorten this window was unprecedented—that the State “intended to treat Mr. Baldwin . . . not differently than similarly situated defendants in New Mexico.” (*Id.* at 1.)

But, in fact, the Special Prosecutors *already had* treated Baldwin differently than similarly situated targets: on the same day they served a target notice on Baldwin, they also served a target notice on Hannah Gutierrez-Reed. But the target notice Morrissey served on Gutierrez-Reed *contained* the 48-hour deadline and therefore gave Gutierrez-Reed an additional four days (or roughly 20% more time than Baldwin) to submit exculpatory material. (*Compare* Ex. 3 (Baldwin target notice) *with* Ex. 4 (Gutierrez-Reed target notice).)

On October 30, 2023, the Special Prosecutors filed this Motion, asking the Court to shorten Baldwin’s time to present exculpatory evidence.

## ARGUMENT

Baldwin respectfully requests that the Court deny the State’s Motion For Scheduling Order Establishing [A Shortened] Deadline For Bort Jones Letter And For Hearing On Baldwin’s Requested Grand Jury Evidence. Baldwin also requests that the Court adjourn the grand jury,

currently scheduled for November 16, 2023, to allow him adequate time to prepare, and the State to review, an alert letter containing exculpatory evidence that exists in this case.

**I. BALDWIN HAS A STATUTORY RIGHT TO SUBMIT AN ALERT LETTER “NO LESS THAN” 48 HOURS IN ADVANCE OF THE GRAND JURY PROCEEDING**

In *Jones v. Murdoch*, 2009-NMSC-002, 145 N.M. 473, the New Mexico Supreme Court established the procedure under which the target is afforded the opportunity to present exculpatory evidence to the grand jury. The Court explained as follows:

[I]f the prosecutor does not want to alert the grand jury to the existence of the witness or does not want to elicit the information from the witness that the target deems worthy of submission to the grand jury, the prosecutor must file a motion with the grand jury judge, with notice to the target, seeking confirmation of the prosecutor’s decision not to call the witness or not to inquire into the subject matter proposed by the target.

. . . In the motion filed with the grand jury judge, the prosecutor should provide the grand jury judge with the target’s letter submitting the proposed evidence, and the prosecutor’s motion should state why the prosecutor believes the grand jury should not be alerted to the existence of the target-offered evidence. The grand jury judge can then decide whether to ask for a written response from the target and whether to hold a short hearing to allow the parties to argue the matter. In any event, the grand jury judge should resolve the matter quickly, by written order in the judge’s discretion if needed to preserve the record, giving the parties clear direction on how to proceed before the grand jury.

*Jones*, 2009-NMSC-002, ¶¶ 35-36, 145 N.M. at 485–87.

In *Jones*, the State had questioned the Legislature’s authority to pass laws (*e.g.*, N.M. STAT. ANN. § 31-6-11(B)) affecting the operations of the grand jury. *Id.* at ¶ 21. In rejecting that view, the Court recognized the Legislature’s authority to enact Section 31-6-11, as well as its clear purpose for doing so:

[G]iven the Legislature’s clear intent to give the grand jury access to more information from the target, we see no basis for concluding that the Legislature intended to give the prosecutor unbridled discretion during the screening process. . . . it would be unreasonable to conclude that the Legislature decided to explicitly give the target the right to alert the grand

jury to the existence of exculpatory evidence while nevertheless allowing the prosecutor to reject such offers without a check.

*Id.* at ¶ 28.

Furthermore, in *Jones*, the State challenged the Court’s authority “to exercise superintending control over the grand jury,” arguing that judicial oversight would be an “improper invasion into the proper independence of the grand jury.” *Id.* at ¶¶ 10, 12 . The Court disagreed, stating that the State seemed to “conflate the role of the prosecuting attorney as an aide to the grand jury with the role of the grand jury itself.” *Id.* (citing *United States v. Fisher*, 455 F.2d 1101, 1105 (2d Cir. 1972) (“[T]he grand jury is not meant to be the private tool of a prosecutor.”); *State v. Haberski*, 449 A.2d 373, 378 (Me. 1982) (“The grand jury does not function as an arm of the prosecution.”); *In re Nat’l Window Glass Workers*, 287 F. 219, 225 (N.D. Ohio 1922) (“The process by which witnesses are compelled to attend a grand jury investigation is the court’s process and not the process of the grand jury, nor of the district attorney.”)). The Court “fail[ed] to see how the Legislature’s attempt to give the grand jury greater access to pertinent evidence somehow diminishes the grand jury’s independence.” *Id.* at 482. On the other hand, the Court noted, “the independence of the grand jury is certainly implicated when the prosecutor wrongfully refuses to alert the grand jury to target-offered evidence contemplated by Section 31-6-11(B).” *Id.* at ¶ 25.

Following the *Jones* decision, the New Mexico Rules of Criminal Procedure for the District Courts were amended to reflect the Supreme Court’s holding. *See* N.M. R. CRIM. P. DIST. CT. 5-302.2(B). The rules provide, in relevant part, as follows:

**(3) Evidence and defenses submitted by target.** If the target submits written notice to the prosecuting attorney of exculpatory evidence as defined in Subparagraph (2) of this paragraph, or a relevant defense, the prosecuting attorney shall alert the grand jury to the existence of the evidence.

...

*(c) Timing. 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.*

**(4) Review of prosecutor's decision not to alert grand jury to target's evidence or defenses.** The prosecuting attorney assisting the grand jury may only be relieved of the duty to alert the grand jury to the target's evidence or defenses by obtaining a court order prior to the grand jury proceeding. The prosecuting attorney shall file a motion under seal with the grand jury judge, with written notice to the target, stating why the target's submitted evidence is not exculpatory as defined in Subparagraph (2) of this paragraph or stating why the grand jury should not be instructed on the target's requested defenses. A copy of the target's grand jury evidence alert letter and cover letter shall be attached to the motion. The target may file under seal a response to the motion, and, if no response is filed, the grand jury judge may ask the target for a written response, to be filed under seal, and may convene a hearing. The burden is on the prosecuting attorney to show that the proposed evidence is not exculpatory as defined in Subparagraph (2) of this paragraph. The grand jury judge will give the prosecuting attorney clear direction on how to proceed before the grand jury, making a record of the decision.

N.M. R. CRIM. P. DIST. CT. 5-302.2(B)(3)-(4) (emphasis added).

The requirements contained in these provisions, the rights they confer on targets, and the burdens they impose on prosecutors, are all clear. Prosecution targets are entitled to submit an alert letter enclosing exculpatory evidence to the prosecuting attorney up until 48 hours before the grand jury proceeding begins, and prosecutors are required to alert the grand jury to the existence of that evidence unless the grand jury judge explicitly relieves them of that obligation based on a determination that the evidence is not exculpatory. *See* N.M. R. CRIM. P. DIST. CT. 5-302.2(B)(3)(c); *see also id.* 5-302.2(B)(4).

Rule 5-302.2 contains no mechanism to allow the prosecuting attorney or the grand jury judge to shorten a prosecution target's time to submit an alert letter. Instead, it contains the exact *opposite* mechanism—one that gives the grand jury judge authority to change “[t]he times set forth in this rule . . . on written motion demonstrating that an *extension* is necessary *in order to assure*

*compliance with the requirements of this rule.”* *Id.* 5-302.2(D) (emphasis added).<sup>2</sup> The Special Prosecutors’ response and citation to Rule 5-302.2(D) (Mot. ¶ 7) reflects a serious misunderstanding of the law. The unambiguous meaning and intent of Rule 5-302.2(D) is to provide an *extension* of time to the target when necessary to “assure” the *prosecutor’s* “compliance” with her duty to “alert the grand jury to the existence of [exculpatory] evidence”—not to shorten the explicit 48-hour deadline contained in Rule 5-302.2(B)(3). *See* N.M. R. CRIM. P. DIST. CT. 5-302.2(D); *id.* 5-302.2(B)(4). There is no reasonable way to read the language differently. Indeed, the whole point of Rule 5-302.2 is to prevent prosecuting attorneys from impeding “the independence of the grand jury” by “wrongfully refus[ing] to alert the grand jury to target-offered evidence contemplated by Section 31-6-11(B).” *Jones*, 145 N.M. at 482 (citing N.M. STAT. § 31-6-11).<sup>3</sup>

The law is clear: Baldwin is entitled to a minimum of 48 hours before the grand jury is convened on November 16 to submit his grand jury alert letter. If anything, the alert letter deadline and grand jury date should be *extended* to ensure Baldwin has the opportunity to present, and the

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<sup>2</sup> This is precisely what Baldwin envisioned when he asked for a call with the Special Prosecutors to “discuss a reasonable schedule for this process” so that we could “ensure this process is done properly the first time around.” (Ex. 2 at 1.)

<sup>3</sup> There is no question that the Rules Committee that enacted Rule 5-302.2(D) would have used different language if they intended to provide a mechanism to shorten the time allowed for targets to submit an alert letter, as they have done in other rules. *See, e.g.*, LR2-308(G)(7) (“The court may *shorten or extend* deadlines in the scheduling order provided any extensions of time shall not result in delay of the plea deadline or the date scheduled for commencement of trial”) (emphasis added); *see also* LR1-114(B)(2) (“If the attorney proposing the order, judgment, or decree certifies on the proposed document that a copy has been served on attorneys for all parties and that the attorneys have failed to respond or indicate objections to the proposing party within five (5) days of service, regardless of the means of service, the document may be submitted to the judge for signature without a request for hearing. These time periods may be *enlarged or shortened* by order of the court”) (emphasis added). For starters, they would have used the opposite language (“shorten” versus “extension”) or provided discretion to either shorten or extend the deadline. Yet they did neither, which also conclusively undercuts the Special Prosecutors’ argument.

State has the opportunity to review, an alert letter identifying exculpatory evidence in this case. There is no lawful basis for the State’s request to shorten Baldwin’s deadline, and the fact that it is trying to punish Baldwin in this manner, while simultaneously respecting the 48-hour deadline for Gutierrez-Reed, discredits the State’s claimed desire to treat Baldwin fairly.

**II. THE TIMING, MANNER, AND BASES FOR RECHARGING BALDWIN JUSTIFY THE FULL (AND ADDITIONAL) TIME TO SUBMIT EXCULPATORY MATERIAL**

There is no law—statutory or otherwise—that grants the Court discretion to shorten Baldwin’s 48-hour deadline. Nonetheless, the Special Prosecutor offers various reasons the Court should do so anyway. Although those reasons are legally irrelevant, they further illustrate how deeply tainted this prosecution has been and will continue to be without Court intervention.

*First*, the Special Prosecutors represent that they have conducted an investigation since April 2023 when they dismissed charges against Baldwin, and that Baldwin and his counsel “have had access to nearly all the discovery in this case for the last eight months” and “are well aware of all possible directly exculpatory evidence today.” (Mot. ¶ 8.) This is false. *See supra* at 6-7. The Special Prosecutors have not provided Baldwin with any new evidence. Based on interview requests filed on Gutierrez-Reed’s criminal case docket, it appears that the Special Prosecutors have conducted numerous witness interviews. They claim to have collected documents from other sources and obtained extensive video clips from the *Rust* production. They also claim to have conducted extensive ballistics testing on the firearm.<sup>4</sup> The Special Prosecutors have not provided

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<sup>4</sup> The Special Prosecutors have revealed, without disclosing any details, that their purported firearm expert has conducted additional testing of the firearm beyond that reflected in an initial report by Lucien Haag. (*See Ex. 5 (State v. Gutierrez, D-101-CR-2023-00040, Aug. 15, 2023, Def.’s Mtn. Requesting Jury Instructions on Causation, Ex. B, Aug. 2, 2023 Initial Report of Lucien Haag (“Haag Report”).*) That initial report acknowledges that the firearm was damaged; notably, although the report reflects images of certain internal components of the firearm that were damaged, it omits critical information about the gun’s poor condition before it was given to Baldwin. (*Id.* at 4.) On this issue, the report only notes that the expert replaced the broken internal parts, and then, in an obvious non-sequitur, says that the rebuilt firearm (now with brand new

Baldwin with *any* of this information—not a single page of evidence. Therefore, the core basis for their motion—that Baldwin has had access to their investigative file for months and therefore doesn’t need the full statutory period to prepare an alert letter—is false.<sup>5</sup>

*Second*, not only is the Special Prosecutors’ argument legally and factually inaccurate, it also makes no sense. Even if the Special Prosecutors had given Baldwin access to the voluminous discovery they claim to have obtained (which they didn’t), that would only further support Baldwin’s request for adequate time to prepare and submit an alert letter. As Morrissey admitted in her October 27, 2023 e-mail to Baldwin’s counsel, the “vast majority of defendants and defense attorneys have no discovery prior to the grand jury.” (Ex. 2 at 1.) *Exactly*. That is why most targets do not require significant time to prepare an alert letter: because there is hardly any evidence for them to review. Thus, there is no basis for the Special Prosecutors’ assertion that Baldwin is “well aware of all possible directly exculpatory evidence today” (Mot. ¶ 8), and even if that were true, it would support Baldwin’s request to adjourn the grand jury date. At a minimum, it would support applying the 48-hour statutory deadline that applies to every other target.

*Third*, the Special Prosecutors also argue, again falsely and nonsensically, that Baldwin “intends to intentionally withhold the requested exculpatory evidence until exactly forty-eight hours prior to the grand jury to cause the postponement of the grand jury proceeding[.]” (Mot. ¶ 8.) The State’s purported “concern” that Baldwin will seek to “cause the postponement of the

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internal components) must have functioned as expected when Baldwin used it. (*Id.* at 5.) Haag’s failure to include the images showing the damage and modification to the firearm, and his specious reasoning, raises good cause to believe that the State will fail to comply with *Jones* if given the opportunity.

<sup>5</sup> It is irrelevant whether or not the Special Prosecutors are required to disclose this information to a target. Baldwin’s point is that the Special Prosecutors are attempting to shorten his time to submit an alert letter based on their misrepresentation that these disclosures were made months ago. Simply put, the premise of their motion is untrue; therefore, the motion should fail.

grand jury proceeding” by complying with a statutory deadline is bizarrely misplaced: Baldwin is *entitled* to submit an alert letter up to 48 hours before the grand jury proceeding. If the Special Prosecutors are concerned that they will have insufficient time to review the exculpatory material submitted by Baldwin, that is a problem of their own making. After all, it is the State that misled Baldwin into believing that he was unlikely to be charged again when it dropped the charges in April. It is the State that told Baldwin it intended to offer him the same plea deal it had offered to Halls, only to abruptly reverse that decision on October 17 well before the deadline they provided. It is the State that scheduled grand jury proceedings to take place less than one month after that unexpected reversal, forcing Baldwin to immediately restart criminal defense work that he had no reason to perform since April 2023. And it is the State that has continued to withhold evidence that it falsely claims to have provided. This is all against the backdrop of an investigation that the State conducted with no signs of urgency—inexplicably and prejudicially delaying this case beyond the *two year* mark, only to turn around now and claim an unexplained exigency that should somehow justify eliminating Baldwin’s statutory rights.

The obvious solution to this issue—the solution Baldwin proposed to the State a week ago—is for the State to postpone the grand jury proceeding and agree on a reasonable schedule that ensures compliance with the standards of fairness that Rule 5-302.2 was designed to achieve. The Special Prosecutors refused. Instead, despite all of the above, the Special Prosecutors seek to plow forward, shift the burden of their self-imposed time crunch onto Baldwin, and make up for any lost time by squeezing that time out of Baldwin’s statutory rights. But granting an adjournment of the grand jury date would be consistent with both the standards set forth in *Jones* and the role of a grand jury judge. As *Jones* explained, the State is required to present to the grand jury “all lawful, relevant, and competent evidence bearing on the issue of probable cause.” *Jones*, 2009-



NMSC-002, ¶ 2, 145 N.M. 473, 475, 200 P.3d 523, 525. And if the State does not want to present that relevant information, the grand jury judge is empowered to “overrule the prosecutor’s desire to withhold information from the grand jury.” *Id.* at ¶ 11. Here, the State’s unreasonably accelerated approach to the grand jury process, along with its clear desire to constrain Baldwin’s alert letter and misrepresentations to the Court about Baldwin’s access to information, raise serious doubts about its intentions to comply with *Jones* and Rule 5-302.2(B). The Court can easily solve this issue by adjourning the grand jury date and setting a schedule for Baldwin’s alert letter that ensures that he has adequate time to identify all exculpatory information and that the State has sufficient time to review that information before presenting to the grand jury.

*Fourth*, Baldwin attempted to streamline this process, and avoid unnecessary work for either side, by requesting a telephone discussion with the Special Prosecutors to discuss the contents of the target notice. (*See* Ex. 6 (Nov. 1, 2023 e-mail from L. Nikas to K. Morrissey) at 2.) The State has previously offered numerous theories of its case. Baldwin therefore sought to clarify the actual scope of the case the Special Prosecutors intended to present. (*See id.*) That, of course, could narrow the alert letter. If the State cooperated, it may have been possible to find a resolution to the issues presented by the State’s motion. But the Special Prosecutors refused to speak with Baldwin’s counsel or provide information about their case. Instead, they said that they didn’t want to “tear a hole” in their schedule to talk with Baldwin’s counsel. (Ex. 7 (Nov. 1, 2023 e-mail from K. Morrissey to L. Nikas) at 1.)

The Special Prosecutors also stated that they were “declining to discuss with you the details of the theories of the criminal charges we intend to present to the grand jury because we believe that Mr. Baldwin should be treated like every other citizen prosecuted in New Mexico” (Ex. 8 (Nov. 1, 2023 e-mail from K. Morrissey to L. Nikas) at 1)—despite the fact that the proposed

discussion would not give Baldwin an unfair advantage in this proceeding and the fact that, as noted above, the Special Prosecutors have had no compunction treating Baldwin worse than similarly situated targets. Put otherwise, given numerous opportunities to fix the scheduling mess they created in ways that would not prejudice Baldwin, the Special Prosecutors have chosen the only method that *would* create prejudice—eliminating Baldwin’s statutory right to submit an alert letter 48 hours before the grand jury convenes and refusing to present the case to the grand jury on a later date.

*Finally*, Baldwin recently learned from the Special Prosecutors that they possessed over a thousand video clips from the *Rust* production. The Special Prosecutors have never disclosed those clips to Baldwin. Over the last week, Baldwin was finally able to obtain some of these clips from a third party. The volume is extraordinary—hours and hours of videoclips broken into dozens of small files across two weeks of filming. And it is clear from just the beginning of our review, which will take several days if not weeks to complete, that the clips contain exculpatory information that demonstrate Baldwin’s focus on set safety. For example, Baldwin can be seen interrupting his performance to ask a set member to move to another location so he or she wasn’t in the line of fire when blanks were being used, stopping a scene because the camera man was on unstable footing, checking on a set member who had tripped and fallen, asking someone to put a blanket on the ground when he was required to drop the firearm in a scene to ensure the firearm didn’t get dirty or damaged, and asking for two guns to be loaded before a scene was filmed to ensure that follow-up takes could be performed immediately without needing to rush the loading of firearms. The Special Prosecutors are required to present this exculpatory information to the grand jury, and the whole purpose of *Jones* is to give Baldwin the opportunity to present this information in an alert letter to ensure the prosecutors do so. The Special Prosecutors’ rushed

grand jury process, in conjunction with their failure to provide *any* information to Baldwin (yet their willingness to misrepresent that fact to the Court), threatens to undermine that statutory right if the grand jury date is not adjourned or if, at a minimum, Baldwin's 48-hour statutory deadline is not enforced.

\* \* \* \*

Baldwin does not seek, and has never sought, special treatment. All he wants, and all he has ever asked for, is to be treated fairly under New Mexico law, in a manner that is consistent with the New Mexico constitution and statutory law, and for the State's prosecuting attorneys to observe basic prosecutorial standards in carrying out their work. To date, that has not happened. The Court should reject the State's unprecedented attempt to shorten Baldwin's statutory right to submit an alert letter on November 14, 2023, 48 hours before the grand jury convenes on November 16, 2023. And to protect Baldwin's rights under *Jones* and Rule 5-302.2, the Court should adjourn the November 16 grand jury date and hold a conference with Baldwin and the State to determine a reasonable schedule that will ensure the State's compliance with New Mexico law.

### CONCLUSION

Baldwin respectfully requests that the Court deny the State's Motion For Scheduling Order Establishing [A Shortened] Deadline For Bort Jones Letter And For Hearing On Baldwin's Requested Grand Jury Evidence. Baldwin also requests that the Court adjourn the grand jury date, currently scheduled for November 16, 2023, to allow him adequate time to prepare, and the State to review, exculpatory information that must be presented to the grand jury.

Date: November 3, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 3, 2023, I filed the foregoing with the Clerk of the Court and caused all participants and counsel of record to be served.

/s/ Heather LeBlanc  
Heather LeBlanc

# **EXHIBIT 1**

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

STATE OF NEW MEXICO,

Plaintiff,

v.

D-101-CR-2023-00040

HANNAH GUTIERREZ-REED,

Defendant.

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**SUPPLEMENT TO MOTION TO DISMISS SECOND AMENDED INFORMATION AND  
MOTION TO DISMISS THIRD AMENDED INFORMATION**

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Defendant Hannah Gutierrez-Reed, by and through her counsel of record, Jason Bowles of Bowles Law Firm, and Todd J. Bullion of Bullion Law Office, hereby submits her supplement to her Motion to Dismiss Second Amended Information and Motion to Dismiss Third Amended Information and states that this supplement and the motion to dismiss the second amended information is now directed at the governing third amended information, and in support states as follows:

In the first motion to dismiss, Ms. Gutierrez Reed raised a number of areas of constitutional infirmity related to the underlying investigation and failures by the State to disclose exculpatory information. Ms. Reed also argued that the continuing involvement in the prosecution by DA Carmack Altweis, after appointment of special prosecutor Andi Reeb, was unauthorized and prejudicially tainted numerous aspects of the investigation and ongoing prosecution. The reason for this is that, consistent with this Court's ruling under the special prosecutor appointment statute, once that appointment was made, DA Carmack Altweis lacked authority to continue, to make decisions, to enter into plea deals and to steer the prosecution.

In its response, the State indicated that it was complying with its obligations under Brady v. Maryland, and its progeny. The state further appeared to concede the jurisdictional issue regarding the district attorney, and it filed a new second amended information attempting to cure any prejudice.

Following completion of briefing on this first motion, counsel was very recently copied on an email from the State's lead investigator. This email was sent by the investigator to DA Mary Carmack Altweis and to special prosecutor Kari Morrissey.

The email is attached. Exhibit A. In that email, the lead investigator, Mr. Shilling, indicates that he has been asked to do no further work on the case. He then acknowledges that the contents of the email are "probably" subject to IPRA, but states that he felt compelled to say anyway:

The current special prosecutor has directed that I conduct no further investigation into this matter. ... The conduct of the Santa Fe County Sheriff's Office during and after their initial investigation is reprehensible and unprofessional to a degree I still have no words for. Not I or 200 more proficient investigators than I can/could clean up the mess delivered to your office in October 2022 (1 year since the initial incident...inexcusable).

Following this send, the special prosecutor emailed and asked counsel for Ms. Gutierrez Reed to delete the email and apparently act as if it never happened, because it was "inadvertently" sent to undersigned counsel. Attached as Exhibit B. Apparently, the special prosecutor misbelieved that counsel for Ms. Gutierrez Reed would have no obligation to follow up.

Counsel then emailed the special prosecutor back and asked why DA Carmack Altweis was still involved in these matters. Special Prosecutor Morrissey then emailed that the contracts were with the district attorney's office, but that Morrissey decided who was hired and fired.

Following this exchange, and media IPRA request of Mr. Shilling's emails, Mr. Shilling messaged to counsel that this IPRA request didn't give him great confidence, and that he was under



an NDA, apparently not to talk about either his being told to stop working, the reasons surrounding that, or anything about the case.

This whole exchange is beyond troubling on many fronts. First, it appears beyond doubt now that the State is attempting to sweep exculpatory information “under the rug.” But for the fortuitousness of this “inadvertent” send, defense counsel would likely have never known about Shilling’s information and extremely negative views on the investigation. Ms. Gutierrez Reed has an expert witness regarding the severe problems in the investigation. The fact that the State’s lead investigator shares those views, or some of those views, is highly exculpatory.

Second, and even more problematic is the apparent existence of an NDA. It appears that the State has actually tried to suppress the statements and testimony of its now former lead investigator. This attempted suppression includes and encompasses what are obviously exculpatory statements by the investigator. Counsel will have to interview Mr. Shilling, and he has long been listed as a witness for the preliminary hearing, and indeed he was the author of the statement of probable cause supporting the charges against Ms. Gutierrez Reed. The fact that he wrote the charges in the manner that he did, but now professes great concern with the quality of the investigation, is a very important and exculpatory matter.

In thirty years of practicing law, both as a prosecutor and defense attorney, undersigned counsel has never seen an instance where a prosecutor attempted to silence a lead investigator, with potentially exculpatory information, through the use of an NDA. There is currently a national movement to ban NDA’s, especially in respect to cases involving sexual harassment or assault, so that powerful political and social figures cannot escape scrutiny and quietly make things disappear. Likewise, Ms. Gutierrez Reed has a constitutional due process right to have exculpatory information timely disclosed to her and for her to pursue investigation of that information. This is

supposed to be a search for the truth, not a game of hide the ball to obtain a conviction. Indeed, an NDA in a state context is also completely inconsistent with the Inspection of Public Records Act and it likely violates that law.

Ms. Gutierrez Reed now requests that this Court order production of all communications and emails in and between Mr. Shilling, DA Carmack Altweis, and the special prosecutors, to review in camera. This request is made because counsel has lost faith that the State will voluntarily comply with its Brady obligations. This request is also made because it appears that DA Carmack Altweis is still having involvement in the case, despite this Court's unequivocal prior order.

Respectfully submitted,

/s/ Jason Bowles

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-and-

Todd J. Bullion  
4811 Hardware Drive, N.E., Bldg D, Suite 5  
Albuquerque, N.M. 87109  
Telephone: (505) 494-4656

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing pleading was sent through the ESF system, which caused the following parties to be served by electronic means, as reflected on the Notice of Electronic Filing this 22<sup>nd</sup> day of June, 2023, to the counsel listed below:

Kari Morrissey  
Jason Lewis  
Special Prosecutors

/s/ Jason Bowles

Jason Bowles  
Bowles Law Firm

## EXHIBIT A

### Rust

Robert Shilling <shilling.robert@gmail.com>

Tue 6/20/2023 4:00 PM

To: Mary Carmack-Altwies <MCarmack-Altwies@da.state.nm.us>

Cc: Jennifer Padgett <jpadgett@da.state.nm.us>; Kari Morrissey <ktm@morrisseylewis.com>; Jason Bowles <jason@bowles-lawfirm.com>

DA Carmack-Altwies -

In accordance with the 'agreement' entered into between your office and myself, specifically item numbered '6', please accept this notice as termination of our 'agreement', effective July 5, 2023 (14 days excluding federal holiday).

The current special prosecutor has directed that I conduct no further investigation into this matter. On that note, it is extremely reasonable that the current special prosecutor have staff/investigator(s) of her choosing as this case moves forward and comes closer to court date(s) and/or dates of import.

All time/hours from this point forward will be focused on a smooth transition to the directed point of contact; including but not limited to:

- Summarizing all interviews and/or contacts into a single report
- Summarizing all diagrams, in draft form, for ready transfer
- Documentation and transfer of any/all photographs/evidence in this matter;
- Binder transfer to the directed point of contact

Knowing full well the probability that this email may be subject to IPRA, I am still compelled to respectfully offer the following:

-The conduct of the Santa Fe County Sheriff's Office during and after their initial investigation is reprehensible and unprofessional to a degree I still have no words for. Not I or 200 more proficient investigators than I can/could clean up the mess delivered to your office in October 2022 (1 year since the initial incident...inexcusable).

It was an honor to be considered and selected to assist in this investigation...an investigation of the preventable, recklessly caused and untimely death of Ms. Hutchins.

Respectfully,

Robert Shilling

EXHIBIT B

**Fwd: Rust**

Kari Morrissey <ktm@morrisseylewis.com>

Tue 6/20/2023 4:39 PM

To: Jason Bowles <jason@bowles-lawfirm.com>

Jason

Rob's email to you was intended for Jason Lewis. It was an inadvertent disclosure. Please delete it. Thank you.

Kari Morrissey

----- Original Message -----

From: Robert Shilling <shilling.robert@gmail.com>

To: Mary Carmack-Altwhies <MCarmack-Altwhies@da.state.nm.us>

Cc: Jennifer Padgett <jpadgett@da.state.nm.us>, Kari Morrissey <ktm@morrisseylewis.com>, jason@bowles-lawfirm.com

Date: 06/20/2023 3:59 PM MDT

Subject: Rust

DA Carmack-Altwhies -

In accordance with the 'agreement' entered into between your office and myself, specifically item numbered '6', please accept this notice as termination of our 'agreement', effective July 5, 2023 (14 days excluding federal holiday).

The current special prosecutor has directed that I conduct no further investigation into this matter. On that note, it is extremely reasonable that the current special prosecutor have staff/investigator(s) of her choosing as this case moves forward and comes closer to court date(s) and/or dates of import.

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EXHIBIT B

It was an honor to be considered and selected to assist in this investigation...an investigation of the preventable, recklessly caused and untimely death of Ms. Hutchins.

Respectfully,

Robert Shilling

# **EXHIBIT 2**

---

**From:** Kari Morrissey <ktm@morrisseylewis.com>  
**Sent:** Friday, October 27, 2023 5:50 PM  
**To:** Luke Nikas; Alex Spiro  
**Cc:** Jason J. Lewis  
**Subject:** Re: Baldwin target notice

---

[EXTERNAL EMAIL from [ktm@morrisseylewis.com](mailto:ktm@morrisseylewis.com)]

---

Luke

I think you are referring to 5-302.2 and we disagree with your interpretation of it. Mr. Baldwin is in a unique position - his attorneys are currently in possession of 95% of the discovery in the case. The vast majority of defendants and defense attorneys have no discovery prior to the grand jury. As such, we disagree that Mr. Baldwin and his counsel are entitled to additional time to submit requests that certain evidence/witnesses be presented the the grand jury. We intend to treat Mr. Baldwin fairly but not differently than similarly situated defendants in New Mexico. We will file our motion and note your opposition. Thank you.

Kari Morrissey

On 10/27/2023 3:21 PM MDT Luke Nikas <lukenikas@quinnemanuel.com> wrote:

Kari,

Rule 5-302A of N.M. R. Crim. P. Dist. Ct. 5 contains the 48-hour deadline. Specifically, that rule states that “[t]he 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.” So we do not consent to a shortened deadline of November 10.

In fact, we believe the current grand jury date of November 16 is too soon to ensure your compliance with Rule 302.2(B). As you know, Rule 302.2(B) requires you to present all exculpatory evidence to the grand jury. Rule 302.2(B) (“The prosecuting attorney shall alert the grand jury to all lawful, competent, and relevant evidence that disproves or reduces a charge or accusation or that makes an indictment unjustified and that is within the knowledge, possession, or control of the prosecuting attorney.”). We do intend to send you an alert letter setting forth certain evidence we believe you are required to present to the grand jury, including witnesses we believe you are required to call. Given the volume of evidence in this case, and the consequences of any failure to present exculpatory evidence (e.g., motions to quash), we want to ensure this process is done properly the first time around.

We therefore believe it is necessary to adjourn the November 16 grand jury date to ensure that you can coordinate appearances of the witnesses we identify and review the voluminous alert letter we will be submitting. Please let us know if you are willing to discuss a reasonable schedule for this process.

Luke Nikas

Partner

Quinn Emanuel Urquhart & Sullivan, LLP

51 Madison Avenue, 22nd Floor

New York, NY 10010

212-849-7228 Direct

212-849-7000 Main Office Number

212-849-7100 FAX

475-558-9881 Home Office

lukenikas@quinnemanuel.com

www.quinnemanuel.com

---

**From:** Kari Morrissey <ktm@morrisseylewis.com>

**Date:** Wednesday, October 25, 2023 at 7:50 PM

**To:** Luke Nikas <lukenikas@quinnemanuel.com>, Alex Spiro <alexspiro@quinnemanuel.com>

**Cc:** Jason J. Lewis <jjl@jjllaw.com>

**Subject:** Baldwin target notice

[EXTERNAL EMAIL from [ktm@morrisseylewis.com](mailto:ktm@morrisseylewis.com)]

---

Luke and Alex



The target notice for Alec Baldwin is attached. Every target notice I have ever seen in NM has a sentence that indicates that the target must notify the prosecution of potential witnesses, questions or exhibits 48 hours prior to the grand jury date. I have never found any basis under the law for the 48 hour deadline and as a result I have eliminated that sentence from this notice. There is a procedure under NM law for you to submit requested questions/exhibits to the prosecution for their consideration at grand jury. I assume you are aware of this procedure and intend to use it. I am happy to work with you in this regard and will fully consider any requests you make. Due to the fact that I have witnesses traveling from out of state to testify before the grand jury on 11/16/23 I intend to ask the grand jury judge (Judge Ellington) if he will establish a deadline for you to provide that information to me of November 10, 2023. Is that agreeable to you? Let me know your thoughts. Thank you.

Kari Morrissey

# **EXHIBIT 3**



**Office of the District Attorney  
First Judicial District  
Mary Carmack-Altwies, District Attorney**

**LEGAL MAIL**

**October 25, 2023**

Alexander Rae Baldwin,  
c/o Luke Nikas ([lukenikas@quinnemanuel.com](mailto:lukenikas@quinnemanuel.com)); Alex Spiro ([alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com))

**Dear Mr. Alexander Rae Baldwin,**

You are the target of a grand jury investigation in Santa Fe County. The crimes being investigated are:

**Count 1: Involuntary Manslaughter**, alleged to have occurred on or about October 21, 2021, contrary to 30-02-03(B);

**Count 2: Involuntary Manslaughter**, alleged to have occurred on or about October 21, 2021, contrary to 30-02-03(B);

Other possible charges may arise from the grand jury investigation.

You have the following rights with respect to this investigation:

- (1) You have a right to counsel to assist you in this matter. If you cannot afford an attorney, one will be appointed for you.
- (2) You have a right to testify before the grand jury if you desire.
- (3) You have the right not to testify.
- (4) You have a right to submit proposed questions and exhibits to the prosecution.
- (5) You have a right to alert the grand jury to the existence of evidence that would disprove or reduce an accusation or that would make an indictment unjustified, by notifying the prosecution.

On November 16, 2023, at 9:00 a.m., This case will be presented to the grand jury at the Steve Herrera Complex, located at 225 Montezuma Avenue, Santa Fe, New Mexico. If you wish to testify at this proceeding, you may appear at that time and place.

You or your attorney may submit proposed questions and exhibits to the district attorney prior to the grand jury proceedings. If you or your attorney wishes to submit proposed questions or exhibits, or for further information on the time and date of the grand jury, you may call Kari T. Morrissey at (505) 361-2138.

Sincerely,

A handwritten signature in black ink, appearing to read "Kari T. Morrissey".

Kari T. Morrissey  
Special Prosecutor

cc: Alex Spiro, Luke Nikas

# **EXHIBIT 4**



**Office of the District Attorney  
First Judicial District  
Mary Carmack-Altewies, District Attorney**

**LEGAL MAIL**

**October 25, 2023**

Hannah Gutierrez, c/o Jason Bowles (Jason@bowles-lawfirm.com)

**Dear Ms. Hannah Gutierrez,**

You are the target of a grand jury investigation in Santa Fe County. The crimes being investigated are:

**Count 1: Unlawful Carrying of a Firearm in Licensed Liquor Establishment, alleged to have occurred on or about October 1, 2021, contrary to 30-07-03;**

Other possible charges may arise from the grand jury investigation.

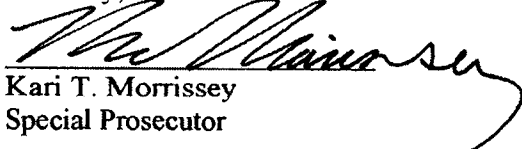
You have the following rights with respect to this investigation:

- (1) You have a right to counsel to assist you in this matter. If you cannot afford an attorney, one will be appointed for you. Call the Public Defender's Office at (505) 395-2888.
- (2) You have a right to testify before the grand jury if you desire.
- (3) You have the right not to testify.
- (4) You have a right to submit proposed questions and exhibits to the prosecution.
- (5) You have a right to alert the grand jury to the existence of evidence that would disprove or reduce an accusation or that would make an indictment unjustified, by notifying the prosecution.

On November 16, 2023, at 9:00 a.m., This case will be presented to the grand jury at the Steve Herrera Complex, located at 225 Montezuma Avenue, Santa Fe, New Mexico. If you wish to testify at this proceeding, you may appear at that time and place.

You or your attorney may submit proposed questions and exhibits to the district attorney at least forty-eight (48) hours prior to the grand jury proceedings. If you or your attorney wishes to submit proposed questions or exhibits, or for further information on the time and date of the grand jury, you may call Kari T. Morrissey at (505)361-2138.

Sincerely,

  
Kari T. Morrissey  
Special Prosecutor

cc: Robert Jason Bowles

# **EXHIBIT 5**

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

STATE OF NEW MEXICO,

Plaintiff,

v.

D-101-CR-2023-00040

HANNAH GUTIERREZ-REED,

Defendant.

---

**DEFENDANT'S MOTION REQUESTING JURY INSTRUCTIONS ON CAUSATION**

---

Defendant Hannah Gutierrez-Reed, by and through her counsel of record, Jason Bowles of Bowles Law Firm, and Todd J. Bullion of Bullion Law Office, hereby moves this Court for Jury Instruction and in support of her motion states as follows:

The special prosecutors have previously stated that they had information that there was an alleged modification of the gun used by Baldwin on the Rust set. The prosecutors indicated that they believed this impacted causation of the manslaughter as to Baldwin, but not as to Ms. Gutierrez Reed. This was the basis for dismissal of charges against Baldwin, without prejudice. (Article attached as Exhibit A). We now have received the prosecutions' gun report by their experts, Lucien Haag and Mike Haag.

The Haag report (attached as Exhibit B) does not indicate any modification to the gun. The report further expresses that when parts broken by the FBI in testing were replaced, the gun fired as designed. The FBI had previously stated in its report that the gun functioned as designed before parts were broken during destructive testing.

Evidence at trial will show that Ms. Gutierrez Reed had asked Halls to be called back into the church if Baldwin was going to use the gun at all. Halls did not call her back into the church before the gun discharged. Had Hannah been present in the church under no circumstances would she have allowed 1) Baldwin to perform the cross draw with his finger on the trigger 2) she would not have allowed Baldwin to point the gun directly at another person and 3) the rounds in the weapon would have been checked again.

Baldwin pointing the gun at Ms. Hutchins and pulling the trigger are independent intervening causes. In an uninterrupted sequence of events Hannah would have been called into the church to perform her job as the armorer on the film. Hannah had no knowledge the gun would be used in a church scene – let alone by pointed at a person. The Haag report specifies that the trigger had to be pulled and rules out certain types of accidental discharge:

"Although Alec Baldwin repeatedly denies pulling the trigger, given the tests, findings and observations reported here, the trigger had to be pulled or depressed sufficiently to release the fully cocked or retracted hammer of the evidence revolver. If the hammer had not been fully retracted to the rear, and were to slip from the handler's thumb without the trigger depressed, the half cock or quarter cock notches in the hammer should have prevented the firing pin from reaching any cartridge in the firing chamber. If these features were somehow bypassed, a conspicuously off-center firing pin impression would result."

Exhibit B at page 27.

Ms. Gutierrez Reed is requesting a ruling in advance of trial that UJI 14-251 and 14-252 be given as jury instructions on causation which are copied in full below:



### **UJI 14-251. HOMICIDE; “PROXIMATE CAUSE”; DEFINED**

In addition to the other elements of the crime of \_\_\_\_\_ (*name of crime*) as set forth in instruction number \_\_\_\_\_, the state must also prove to your satisfaction beyond a reasonable doubt that

1. The death was a foreseeable result of \_\_\_\_\_;
2. The act of the defendant was a significant cause of the death of \_\_\_\_\_ (*name of victim*).

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

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

### **UJI 14-252. HOMICIDE; NEGLIGENCE OF DECEASED OR THIRD PERSON**

The State must prove beyond a reasonable doubt that the defendant's act was a significant cause of the death of \_\_\_\_\_ (*name of victim*). An issue in this case is whether the negligence of a person other than the defendant may have contributed to the cause of death. Such contributing negligence does not relieve the defendant of responsibility for an act that significantly contributed to the cause of the death so long as the death was a foreseeable result of the defendant's actions.

However, if you find the negligence of a person other than the defendant was the only significant cause of death or constitutes an intervening cause that breaks the foreseeable chain of events, then the defendant is not guilty of the offense of \_\_\_\_\_ (*name of offense*).

## **Conclusion**

Ms. Gutierrez Reed respectfully requests this Court, after hearing all the evidence in the case, instruct the jury on the above uniform jury instructions on causation.

Respectfully submitted,

/s/ Jason Bowles

Jason Bowles

Bowles Law Firm

4811 Hardware Drive, N.E., Bldg D, Suite 5

Albuquerque, N.M. 87109

Telephone: (505) 217-2680

Email: jason@bowles-lawfirm.com

-and-

Todd J. Bullion

4811 Hardware Drive, N.E., Bldg D, Suite 5

Albuquerque, N.M. 87109

Telephone: (505) 494-4656

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing pleading was sent through the ESF system, which caused the following parties to be served by electronic means, as reflected on the Notice of Electronic Filing this 15<sup>th</sup> day of August, 2023, to the counsel listed below:

Kari Morrisey  
Jason Lewis  
Special Prosecutors

/s/ Jason Bowles

Jason Bowles

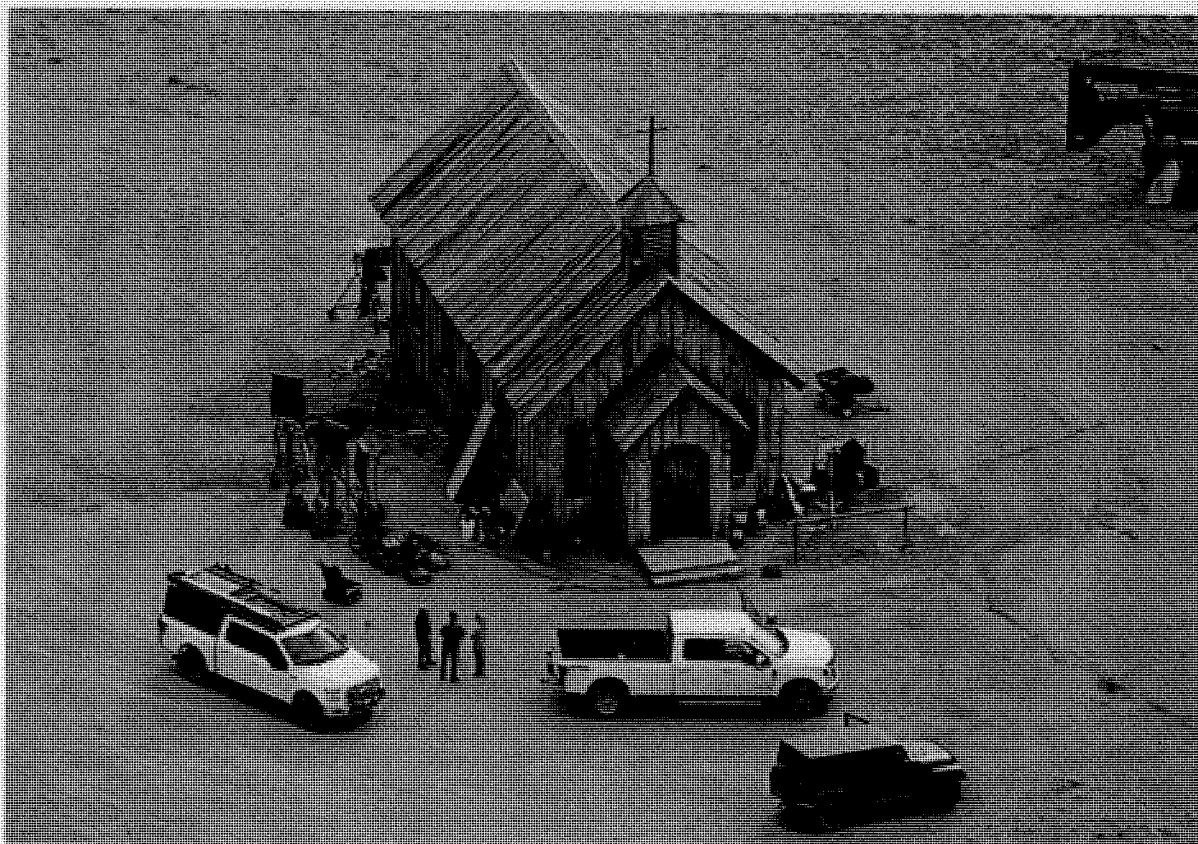
Bowles Law Firm



# 'Rust' Armorer Hannah Gutierrez-Reed Pleads Not Guilty in New Mexico Case, Trial Set for December

"She looks forward to her day in court, and to having the conduct of everyone on set fully examined," Hannah Gutierrez-Reed's attorney said

By [Benjamin VanHoose](#) | Published on August 10, 2023 02:13PM EDT



The set of "Rust" in 2021. PHOTO: JAE C HONG/AP/SHUTTERSTOCK

Hannah Gutierrez-Reed, the *Rust* armorer charged in connection to cinematographer Halyna Hutchins's on-set death, has pleaded not guilty.



written plea of not guilty on Wednesday.

"Ms. Gutierrez has pled not guilty to all charges and is preparing for her day in court," her attorney Jason Bowles said in a statement to PEOPLE. "She looks forward to her day in court, and to having the conduct of everyone on set fully examined."

Judge Mary Marlowe Sommer of the First Judicial District of New Mexico set the trial for between Dec. 6 and 15, with jury selection on Dec. 5.

The agreed upon conditions of Gutierrez-Reed's release say she cannot possess firearms, cannot consume drugs or alcohol (with twice-monthly tests), and cannot return to the location of the alleged incident.

**RELATED:** [Prosecutors Allege 'Rust' Armorer Was Hungover, Resulting in Live Rounds Being Loaded in Gun](#)





Hannah Gutierrez-Reed. PHOTO: THEIMAGEDIRECT.COM

Gutierrez-Reed was the armorer hired for the indie Western film *Rust*, which had Alec Baldwin starring and producing. During a rehearsal on the set at Bonanza Creek Ranch in Santa Fe, New Mexico, on Oct. 21, 2021, Baldwin held a prop gun that happened to be loaded with live rounds and discharged, shooting director Joel Souza and cinematographer Hutchins.

While Souza survived the injuries, 42-year-old Hutchins was killed in the incident.

It was announced in January that both Baldwin, 65, and Gutierrez-Reed would be charged with two counts of involuntary manslaughter. However, in April, the criminal charges against Baldwin were dropped.

In a statement at the time, the actor's attorneys Luke Nikas and Alex Spiro said, "We are pleased with the decision to dismiss the case against Alec Baldwin and we encourage a proper investigation into the facts and circumstances of this tragic accident."

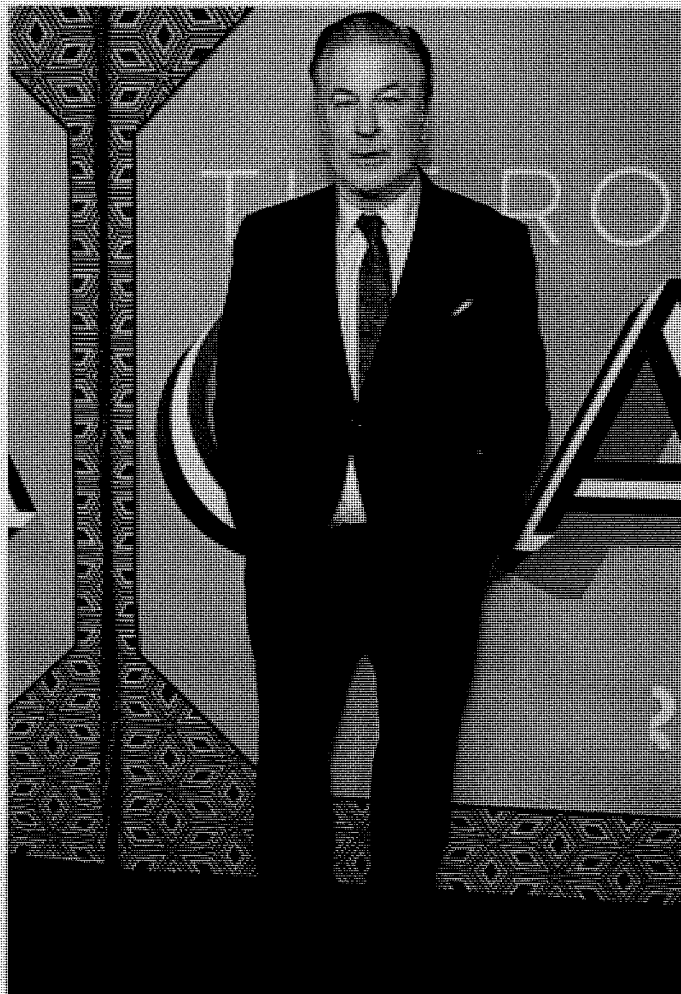




Bonanza Creek Ranch in Santa Fe. PHOTO: JAE C HONG/AP/SHUTTERSTOCK

Prosecutors Kari Morrissey and Jason Lewis, however, wrote in a June 9 court filing that Baldwin could still face charges pending another ongoing investigation into the gun.

"The gun and broken sear have been sent to the state's independent expert for further testing. The charges against Alec Baldwin were dismissed without prejudice because a possible malfunction of the gun significantly effects causation with regard to Baldwin, not with regard to Gutierrez. If it is determined that the gun did not malfunction, charges against Mr. Baldwin will proceed," they wrote at the time, adding that they expected to make a final charging decision for Baldwin within the next 60 days of that filing.





Baldwin and Souza returned with most of the original cast and crew to finish production on *Rust* earlier this year, this time in Montana rather than New Mexico.

Director Souza said in October about finishing the movie (with Hutchins' husband Matthew now on board as an executive producer), "Those of us who were lucky enough to have spent time with Halyna knew her to be exceedingly talented, kind, creative and a source of incredible positive energy. I only wish the world had gotten to know her under different circumstances, as it surely would have through her amazing work."

"In my own attempts to heal, any decision to return to finish directing the film could only make sense for me if it was done with the involvement of Matt and the Hutchins family. Though certainly bittersweet, I am pleased that together, we will now complete what Halyna and I started. My every effort on this film will be devoted to honoring Halyna's legacy and making her proud. It is a privilege to see this through on her behalf."

**ILLUSTRATED REPORT**

of

**August 2, 2023**

in the matter of

**STATE of NEW MEXICO**

**vs.**

**HANNAH GUTIERREZ REED**

**1<sup>st</sup> JUDICIAL DISTRICT**

**STATE of NEW MEXICO**

**COUNTY of SANTA FE**

**Case No. D-101-CR-2023-00040**

**FSSI Case No. 23/04CR**

prepared for

**Kari T. Morrissey and Jason J. Lewis**

**Special Prosecutors**

**First Judicial District, Santa Fe County, NM**

by

**Lucien C. Haag**

**Criminalist/Forensic Firearms Examiner**

**FORENSIC SCIENCE SERVICES, INC.**

**P.O. Box 5347**

**Carefree, AZ 85377**



## EXHIBIT B

### FSSI Case No. 23/04CR

#### **Introduction**

This file was first opened on March 17, 2023, upon the electronic receipt of a number of pdf documents. A large box containing five (5) large binders of documents was subsequently received on April 12, 2023. Additional documents, digital images and video files were received in the weeks and months to follow. These included the Santa Fe County Sheriff's Office Incident Report, the autopsy report for Halyna Hutchins, "Jailhouse" interviews of Hannah Gutierrez-Reed, Alec Baldwin, Dave Halls, Seth Kenney and Sarah Zachry, OSHA interviews of Hannah Gutierrez-Reed, Alec Baldwin, Dave Halls, Seth Kenney, Reid Russell, and Sarah Zachry. An interview of Alec Baldwin by George Stephanopoulos on December 3, 2021. A telephonic interview of Thell Reed by Detective Hancock, transcribed January 25, 2023. A November 29, 2021, interview of Sarah Zachry by Detective Hancock.

On April 19, 2023, two (2) videos were received depicting actor Alec Baldwin in Western garb, quick-drawing a long-barreled, single action revolver and pointing it in the general direction of the video-camera.

A transcript of an April 20, 2023, interview of Seth Kenney by Detective Hancock.

#### **Case Overview – Matters Not Likely in Dispute**

This incident involves the fatal shooting of Halyna Hutchins and wounding of Joel Souza that occurred on October 21, 2021, around 1:30pm during a practice rehearsal on the RUST movie set near Santa Fe New Mexico. Actor Alec Baldwin was handling a .45 Colt caliber prop revolver manufactured by the Pietta company of Gussago, Italy while seated on a pew in a mock church. The rehearsal involved a close-up scene in which he was to quickly draw the revolver from a holster inside his coat and bring it into a forward-pointing shooting position. At some point during this session, Mr. Baldwin retracted the external hammer on this revolver while it was pointed in the direction of Ms. Hutchins behind who was standing Mr. Souza. A live cartridge in the revolver was discharged (by a means presently in dispute) resulting in a fatal, perforating gunshot wound to Ms. Hutchins and a non-fatal penetrating gunshot wound to Mr. Souza. The bullet was recovered from Mr. Souza at the hospital.

#### **Matters to be Addressed**

The issues presented to this writer were the operation and condition of the incident Pietta Model 1873 revolver at the time of the incident, how it was discharged, the source of the live cartridge, whether it could be distinguished from the various types of dummy cartridges employed in the RUST production and whether the evidence bullet and fired cartridge case were of the same design as the live ammunition recovered from the RUST movie set.

#### **Initial Physical Evidence Receipt**

On July 3, 2023, this writer and Michael Haag (Forensic Science Consultants) appeared at the Santa Fe County Sheriff's Office (SFSO) Property Facility and took possession of 52 listed items of physical evidence, many of which were later found to contain multiple sub-items. These are listed on the next page.

## EXHIBIT B

On July 20, 2023, two (2) additional items of evidence were received at the SFSO Property Facility. These were the decedent's jacket and the FBI Lab-generated test-fired bullets and cartridge cases from the evidence revolver. [SFSO Items 258 and 267 respectively].

Item No. 1 described as 45cal Revolver  
Item No. 2 described as 2 boxes ammo  
Item No. 3 described as spent 45cal round  
Item No. 4 described as revolver with blocked cylinder  
Item No. 21 described as jacket  
Item No. 25 described as one projectile  
Item No. 26 described as two 45cal rounds  
Item No. 27 described as one 45cal round  
Item No. 28 described as one 45cal round  
Item No. 29 described as one 45 colt round w/bbs primer intact  
Item No. 30 described as two 45 colt rounds w/bbs primer intact  
Item No. 31 described as one 45 colt round whole primer intact  
Item No. 41 described as two 45 colt mds w/holes primer intact  
Item No. 44 described as 13 45 colt rounds w/bbs primer intact  
Item No. 46 described as one 45 colt md whole primer intact  
Item No. 47 described as nine 45 colt mds w/bbs primer intact  
Item No. 58 described as one 45 colt round w/bbs silver primer  
Item No. 59 described as one 45 colt md w/bbs primer intact  
Item No. 84 described as five 45 colt rounds hole no primer  
Item No. 85 described as one 45 colt round w/bbs primer intact  
Item No. 87 described as 22 45 colt mds w/bbs silver primer  
Item No. 88 described as one spent 45 denix round no sound  
Item No. 129 described as three 45 colt mds w/holes no primer  
Item No. 140 described as one box w/ ammo  
Item No. 143 described as plastic bag w/16 spent 45 colt mds  
Item No. 144 described as 4 spent 45 colt mds w/ silver primer  
Item No. 145 described as two spent BHA 45 colt rounds  
Item No. 146 described as spent S&B 45 colt round  
Item No. 161 described as spent Winchester 45 colt round  
Item No. 162 described as five spent 45 colt rounds  
Item No. 169 described as revolver with blocked cylinder  
Item No. 187 described as 45 colt round w/bbs silver primer  
Item No. 194 described as 45 cal revolver with engravings  
Item No. 195 described as 45 cal revolver with engraving  
Item No. 196 described as 45 cal revolver  
Item No. 197 described as 45 cal revolver with engraving  
Item No. 198 described as 45 cal revolver  
Item No. 199 described as 45 cal revolver with engravings  
Item No. 200 described as 45 cal revolver with engraving  
Item No. 201 described as 45 cal revolver with engraving  
Item No. 202 described as 45 cal revolver  
Item No. 203 described as 45 cal revolver  
Item No. 204 described as 45 cal revolver  
Item No. 205 described as 45 cal revolver  
Item No. 210 described as one 45 caliber live round  
Item No. 211 described as six suspected live rounds  
Item No. 213 described as 248 spent BHA 45 colt silver primer  
Item No. 215 described as 77 spent 45 colt silver primer  
Item No. 234 described as one 45 cal round  
Item No. 235 described as five 45 cal rounds  
Item No. 236 described as nine 45 cal rounds  
Item No. 237 described as ammunition box

### The Evidence Revolver, SFSO Item 1

The evidence revolver, Santa Fe Sheriff's Office (SFSO) Item 1, is an Italian-manufactured facsimile of the Colt 1873 single-action (S/A) revolver chambered for the .45 Colt cartridge and made by the Pietta firm in Gussago, Italy and imported by E.M.F. in Santa Ana, California.

The serial number on this revolver is E52277. It also possesses the number "2014" stamped on the front of the frame adjacent to the cylinder pin.

This revolver was inoperative upon receipt from the Santa Fe Sheriff's Office Property Facility on July 3, 2023 at 10:30am. Subsequent disassembly of this revolver on July 6, 2023 revealed that the full-cock step on the hammer had been severely damaged, the top of the trigger's sear was broken off and the bolt (cylinder stop) was also broken. **Figure 1a** shows the revolver as first observed upon opening the evidence box. **Figure 1b** shows the broken parts which had been previously taped to the inside of the evidence box. **Figure 1c** shows the broken trigger and its temporary replacement.

EXHIBIT B

FIGURE 1a



FIGURE 1b

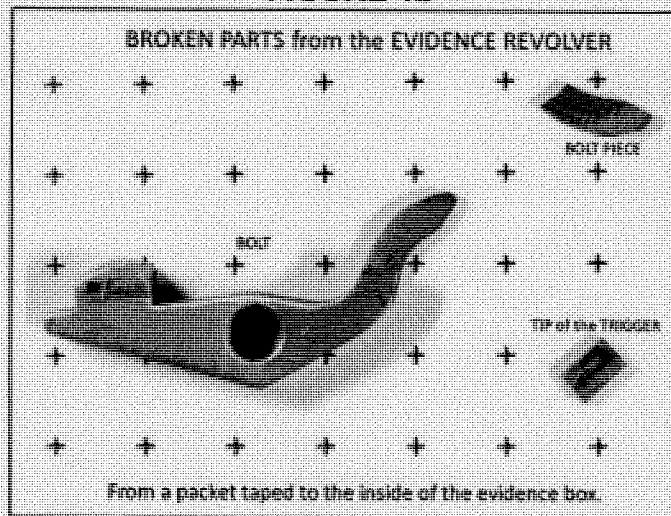
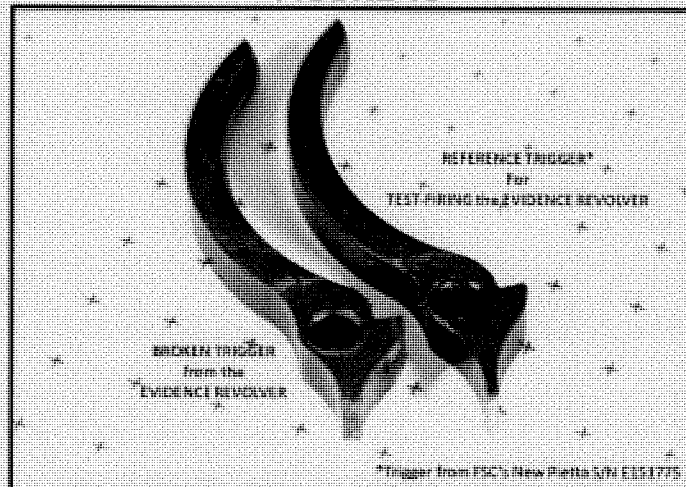


FIGURE 1c

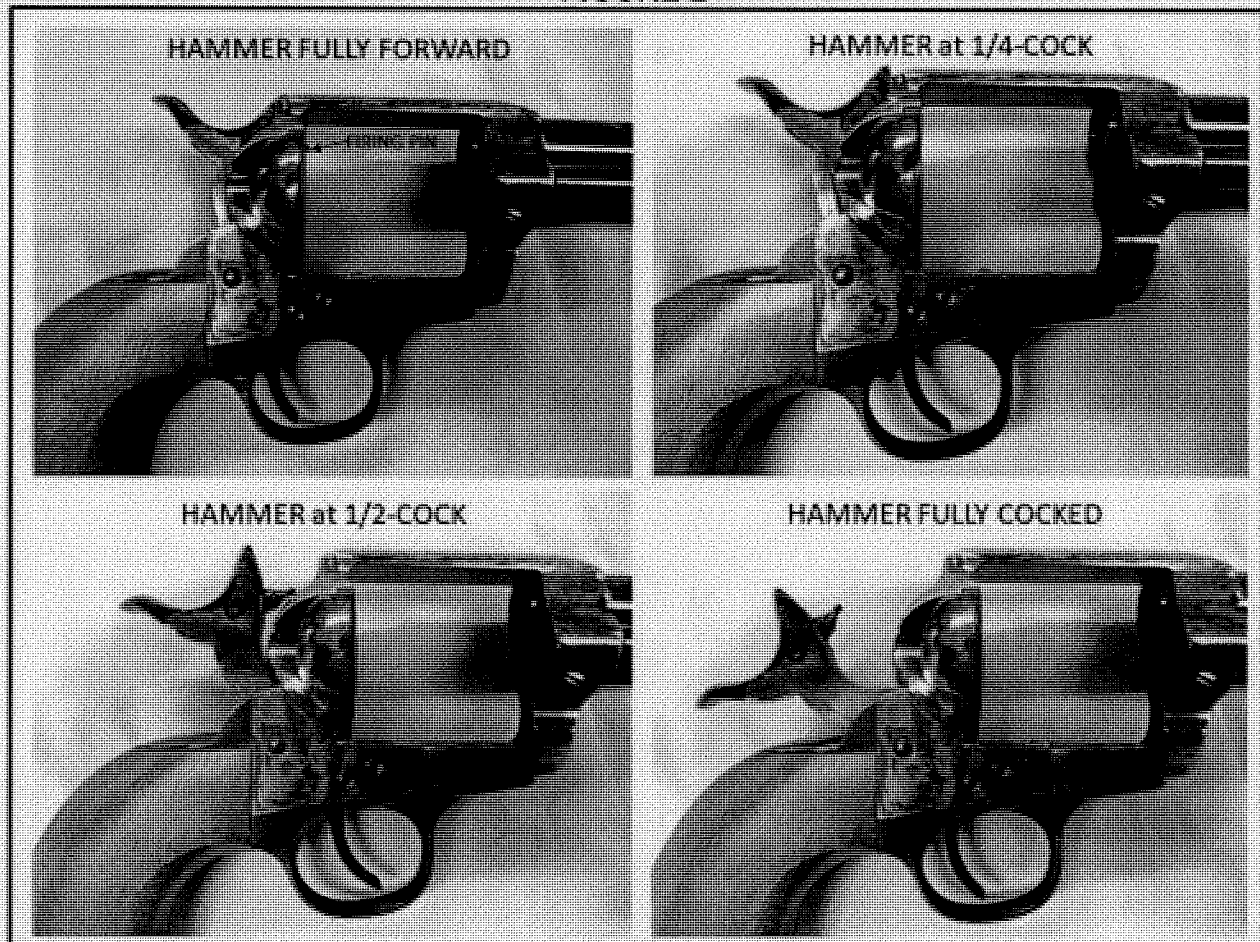


## EXHIBIT B

This revolver was returned to service for test-firing and function tests by installing a new bolt purchased by this writer and the trigger and hammer from a new, unfired Pietta 1873, .45 Colt, S/A revolver, serial number E151775 owned by Michael Haag of Forensic Science Consultants, Albuquerque, New Mexico.

Upon reassembly, the evidence revolver was found to function properly and in accordance with the operational design of original Colt 1873 single-action revolvers. This included the timing and alignment of the cylinder and one of its six chambers with the axis of the barrel just as the retracting of the revolver's external hammer was manually drawn to the full-cock position. An untoward discharge of a live cartridge during a loss of control of the hammer during the manual retraction process *before* reaching the fully cocked position was thwarted by the hammer being captured by either the half-cock loading notch or the quarter-cock safety notch in the hammer as long as the trigger is not being depressed during this process. These two (2) intermediate hammer positions, (the half-cock or load position and the quarter-cock safety position) were also found to function properly. No "push-off" with the replacement hammer at the fully cocked position occurred when pressure was applied to the back of the hammer spur. The four (4) positions of the hammer in properly functioning Pietta 1873 revolvers are shown in **Figure 2**.

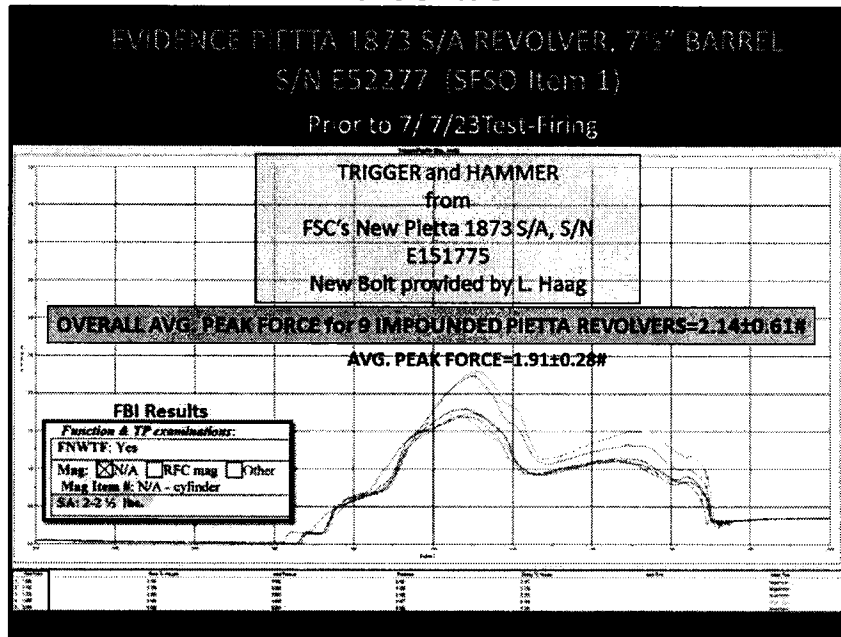
**FIGURE 2**



## EXHIBIT B

Following these function tests, the evidence revolver was mounted in a previously calibrated *TriggerScan*<sup>™</sup> device after which multiple (6) scans were carried out to determine the average force, in pounds, necessary to discharge this firearm. These tests yielded an average trigger pull value of  $1.9 \pm 0.3$  pounds. This value is in close agreement with the FBI Laboratory value of 2 to 2½ pounds (measurement method presently unknown). The *TriggerScan*<sup>™</sup> device was used with the same settings and configuration to measure the average trigger pull values of twelve (12) impounded, single action revolvers from the 'RUST' movie set, nine (9) of which were Pietta single action revolvers having the same fire control system as the evidence revolver. The average for the 12, single action revolvers (to the nearest tenth of a pound) was  $2.0 \pm 0.6$  pounds. The average trigger pull force for the nine (9) Pietta single action revolvers was  $2.1 \pm 0.6$  pounds. **Figure 3** depicts the *TriggerScan*<sup>™</sup> results for six (6) measurements on the evidence revolver and includes the numerical results for the nine (9) impounded Pietta single action revolvers.

**FIGURE 3**



Six (6) cartridges of .45 Colt ammunition were prepared by this writer which contained 250-grain, .45-caliber, cast lead bullets and 7.0-grain charges of *Trai Boss*<sup>™</sup> powder ignited by Remington large pistol primers. This 'Cowboy Action' load produces a calculated peak pressure of 10,830 pounds per square inch (psi) and a muzzle velocity for this bullet of 860 feet per second (fps) when fired from a Pietta M1873 single action revolver with a 7½-inch barrel. The pressures produced by this load are well within the S.A.A.M.I. peak operating value of 14,000psi for this cartridge yet sufficient to imprint a revolver's unique breechface pattern in the primers of fired cartridges. This was confirmed by the subsequent microscopic examination of the six (6) fired cartridge cases which were then scanned with the *Evofinder*<sup>™</sup> 3D ballistic scanning device for the purpose of measuring firing pin impression depths.

**The Evidence Cartridge Case, SFSO Item 3**

This item consisted of a spent, .45 Colt brass cartridge case, bearing the *Starline*™ headstamp and logo with a nickel-plated primer possessing a normal-appearing firing pin impression (FPI). The thoroughly flattened primer in the spent evidence cartridge also had well-impressed toolmarks from the associated revolver's recoil shield. These corresponded to those left in the primers of the six (6) test-fired cartridges which established the SFSO Item 3 cartridge case as having been fired in the Evidence Revolver (SFSO Item 1). The head and mouth of the Item 3 Cartridge Case appear in **Figure 4**. After calibration check scans were conducted with the instrument, the head of this cartridge case was scanned with the *Evofinder*™ 3D ballistic scanning device. The 3D and Color Depth Modes of this device were used to study and ultimately measure the depth of the firing pin impression. [See **Figure 5**] Four (4) measurements were taken from the maximum depth of the FPI to the 12 o'clock, 3 o'clock, 6 o'clock and 9 o'clock areas of the flattened primer, all of which yielded the same value of 0.026-inches.

FIGURE 4

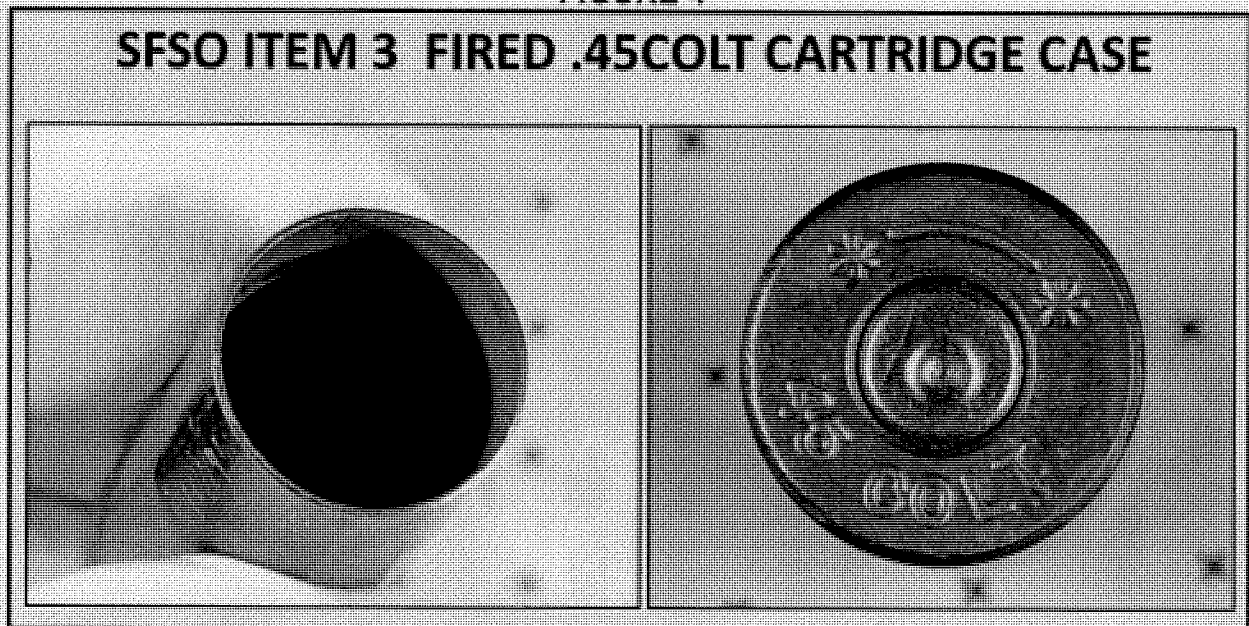


FIGURE 5



The firing pin impressions in each of the six (6) test-fired cartridges were measured with the same device and by the same method. The results are shown in **Table 1**.

Evidence Item 267 (FBI Lab test-fired cartridge cases) This item contained twelve (12) test-fired, .45 Colt cartridge cases discharged in the evidence revolver which were of mixed headstamps\* and both plain brass and nickel-plated primers.

\*3 PMC, 3 W-W, 2 Winchester, 2 F-C, and 2 R-P.

Replicate FPI depth measurements were taken with the *Evofinder*<sup>™</sup> device which yielded an average value of  $0.028 \pm 0.003$ -inches. These measurements are shown in **Table 2**.

**TABLE 1**  
**EVIDENCE REVOLVER – FIRED PRIMERS**

HANDLOADS by LUKE HAAG  
7.0gr of TRAIL BOSS  
250gr. LEAD ROUND NOSE-FLAT POINT BULLETS  
REMINGTON BRASS LARGE PISTOL PRIMERS  
APPROXIMATE MUZZLE VELOCITY (7½" bbl.) 860fps

**FIRING PIN IMPRESSION DEPTHS**

0.028/0.028/0.025/0.028  
0.029/0.029/0.029/0.030  
0.031/0.032/0.031/0.029  
0.024/0.024/0.025/0.024 (Low)  
0.032/0.032/0.032/0.032 (High)  
0.031/0.031/0.031/0.031  
**AVERAGE of 0.029±0.003"**

**TABLE 2**

**FBI TEST-FIRED CARTRIDGES**

**FIRING PIN IMPRESSION DEPTHS**

LH-1 PMC:	0.025/0.025"
LH-2 W-W:	0.029/0.028"
LH-3 W-W:	0.029/0.031"
LH-4 R-P:	0.022/0.022" (low)
LH-5 F-C:	0.032/0.032" (high)
LH-6 PMC:	0.031/0.031"
LH-7 W-W:	Backed Out Primer
LH-8 F-C:	0.024/0.026"
LH-9 PMC:	0.028/0.028"
LH-10 Winchester:	0.029/0.029"
LH-11 R-P:	0.026/0.027"
LH-12 Winchester:	0.026/0.027"
<b>OVERALL AVERAGE = 0.028±0.003"</b>	

In order to produce the FPI in the SFSO Item 3 evidence cartridge case, the hammer of the evidence revolver, SFSO Item 1, had to be manually retracted to the fully-cocked position which simultaneously rotates, then locks and aligns the top chamber in the cylinder with the axis of the bore. Once this is accomplished, the trigger must either be



## EXHIBIT B

pulled or depressed in the usual means of discharge, or already held rearward during the cocking process in order to release and allow the hammer to fall with its full force and drive the firing pin into the fully aligned cartridge's primer. As stated previously, the necessary force applied to the trigger to fire the evidence revolver with replacement parts as measured with the *TriggerScan*<sup>™</sup> device is approximately 1.9 pounds, which is in close agreement with the FBI measurements prior to the damage to the sear and hammer. To affect the release of the fully cocked hammer, the trigger must be pulled (moved) rearward a distance of approximately 0.10-inches. This seemingly short trigger movement is typical of traditional, Western-style revolvers including the original Colt revolvers and the various modern facsimiles. It was also in close agreement with that of a new, Pietta M1873 single-action revolver (0.11-inches) and noticeably greater than the 0.068-inch average for the nine (9) impounded Pietta .45-caliber, single-action revolvers.

### **The Evidence Bullet, SFSO Item 25 Recovered from Victim Joel Souza**

This fired, cast lead bullet had a terminal weight of 239.7-grains. It has experienced substantial terminal ballistic damage and deformation, some of which appears to be the consequence of its passage through a heavily fouled bore to the extent that only remnants of the rifling marks were present on one side of the bearing surface of this bullet.

The surviving rifling impressions were so *indistinct* that neither a land and groove count nor a measurement of land widths was possible. The most that could be determined was that of a right-hand twist (which the evidence revolver possesses). This passage through a heavily fouled bore appears to have resulted in an extrusion effect which has reduced and altered the diameter of this .45-caliber bullet to minimum and maximum values of 0.430-inches to 0.440-inches. The general design has survived and is that of a hard cast lead, round nose-flat point bullet with a single deep lubricating groove (cannelure) approximately 0.1-inch forward of the bullet's flat base. Faint traces of an upper crimping groove could also be seen on several areas of the evidence bullet. Two views of this bullet appear in **Figure 6a** and **Figure 6b**.

**FIGURE 6a**

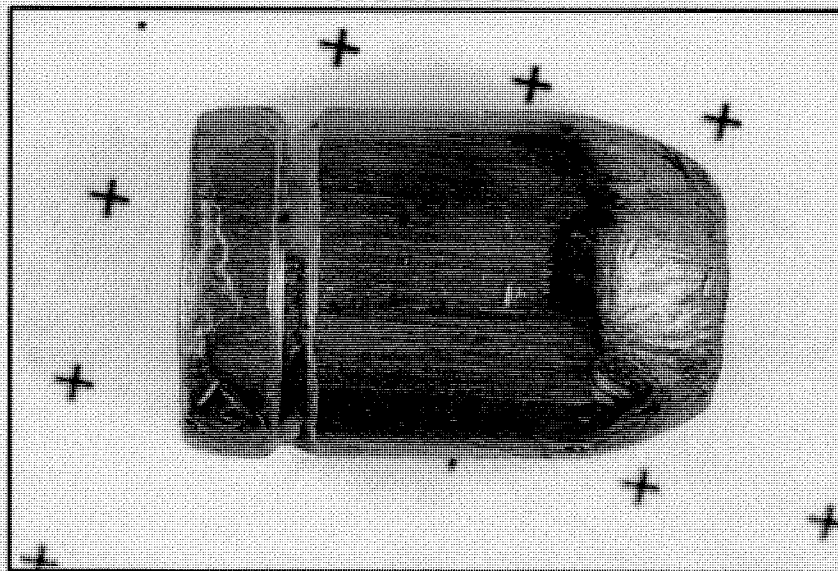
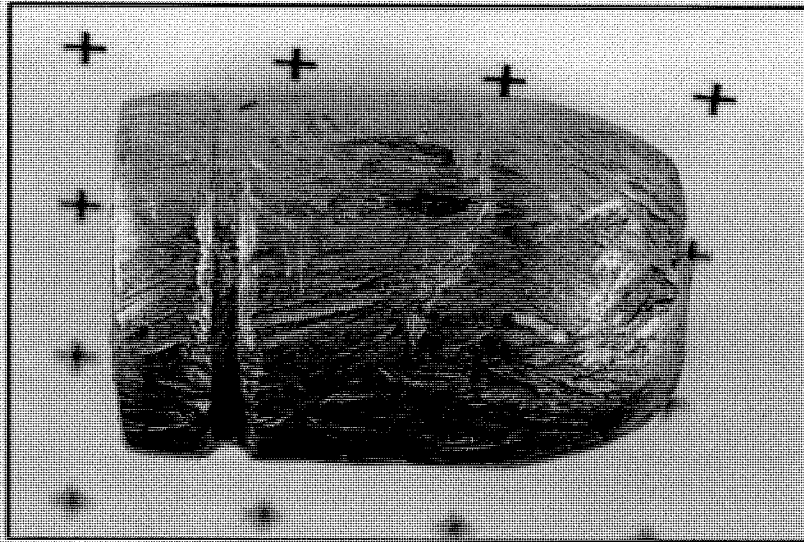


FIGURE 6b



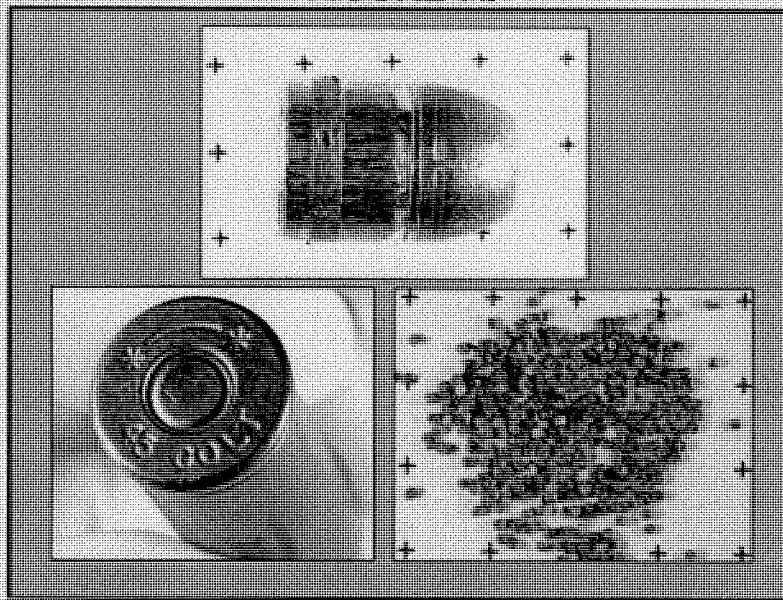
**Live Cartridges from the RUST Movie Set, SFSO Items 2, 26, 27, 28**

SFSO Item 2 consisted of a sealed brown paper bag marked "- - vehicle of Lt. Benavidez - -" found to contain multiple sub-items in the form of eight (8) sealed plastic packets, one of which possessed FBI sub-item number "13-1". This item contained a previously disassembled live cartridge of .45 Colt ammunition. [See Figure 7a] Figure 7b provides a closer view of the three components of this cartridge- a virgin brass case of *Starline*<sup>™</sup> manufacture containing a nickel-plated primer, a 250-grain hard cast, .45-caliber lead bullet and a disk-flake form of smokeless powder. This powder was comparable in form and particle size to *Bullseye*<sup>™</sup> Pistol Powder.

FIGURE 7a



FIGURE 7b



SFSO Item 26

This item consisted of a large, sealed manila envelope marked "- - top of cart southwest of building - -" found to contain two sub-items in the form of smaller, sealed manila envelopes each containing sealed plastic packets with FBI sub-item numbers "4" and "5". Both of these inner plastic packets were found to contain a previously disassembled live cartridge of .45 Colt ammunition. Figure 8a, 8b and 8c provide successive views of FBI sub-item 4 and its contents. Figure 9a and Figure 9b provide successive views of FBI sub-item 5 and its contents.

FIGURE 8a

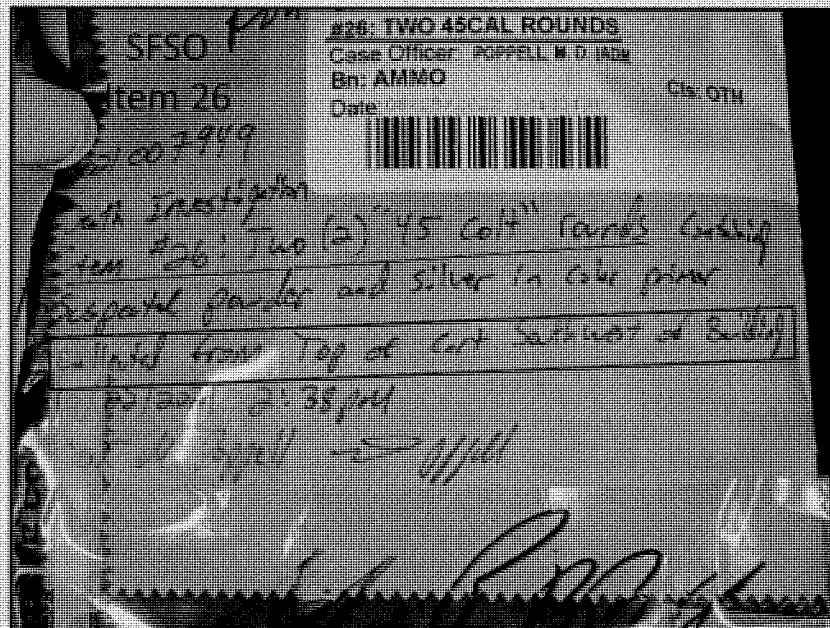


FIGURE 8b



FIGURE 8c

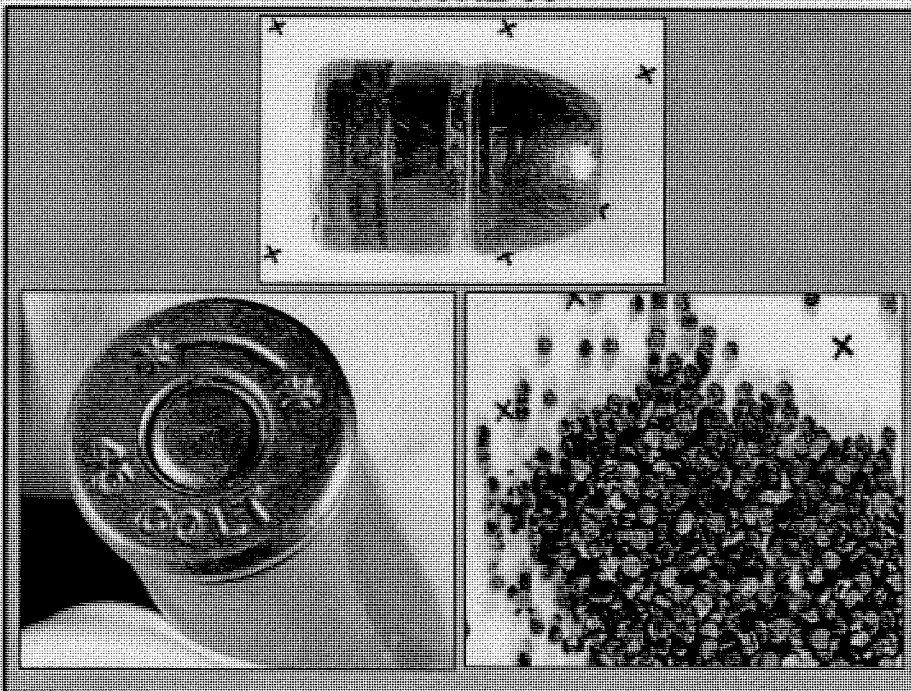
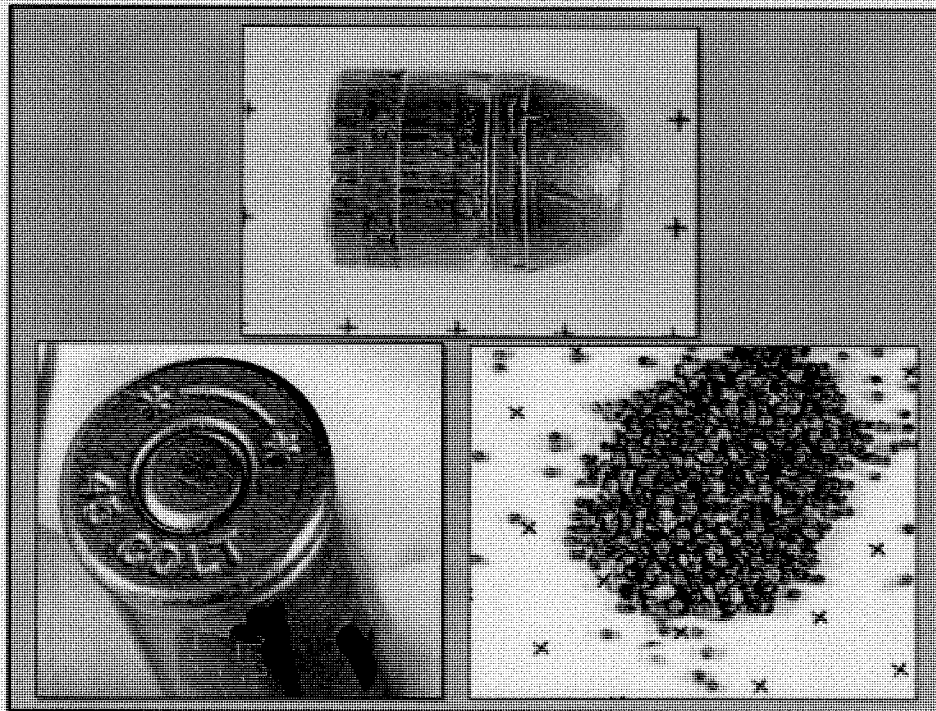


FIGURE 9a



FIGURE 9b



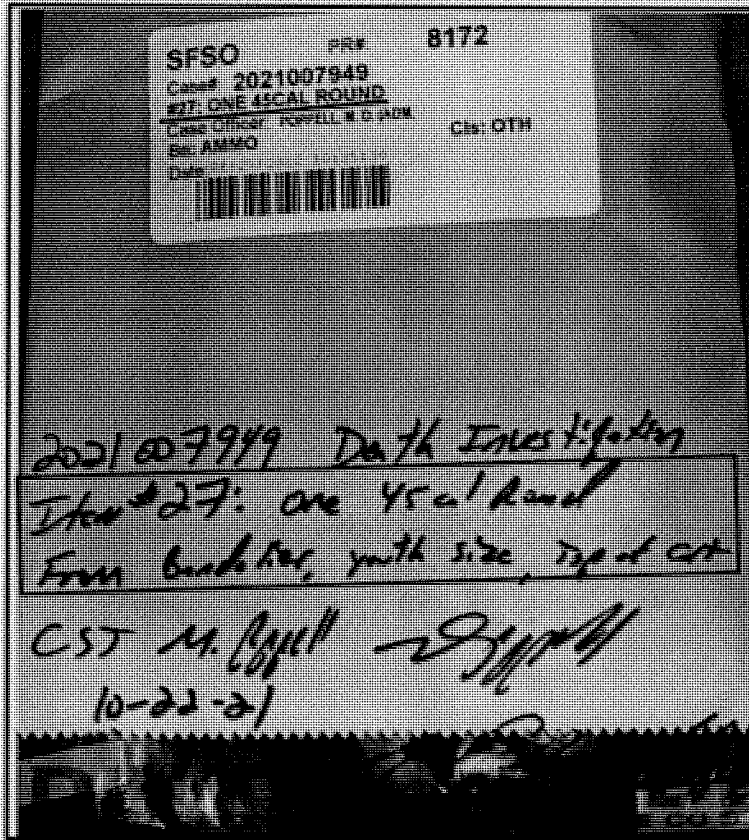
As with previous SFSO Item 2, these two disassembled cartridges consisted of virgin brass cases of *Starline*™ manufacture containing nickel-plated primers, 250-grain hard cast .45-caliber lead bullets and a disk-flake form of smokeless powder comparable in form and particle size to *Bullseye*™ Pistol Powder.

EXHIBIT B

SFSO Item 27

This item consisted of a large, sealed manila envelope marked "- - from bandolier, youth size, top of cart - -" [See **Figure 10a**] found to contain a previously-disassembled live cartridge of .45 Colt ammunition in a sealed plastic packet. The bullet, cartridge case and propellant in this item were the same as those in SFSO Items 2 and 26. The disassembled Item 27 cartridge is depicted in **Figure 10b** and **Figure 10c**.

**FIGURE 10a**



**FIGURE 10b**

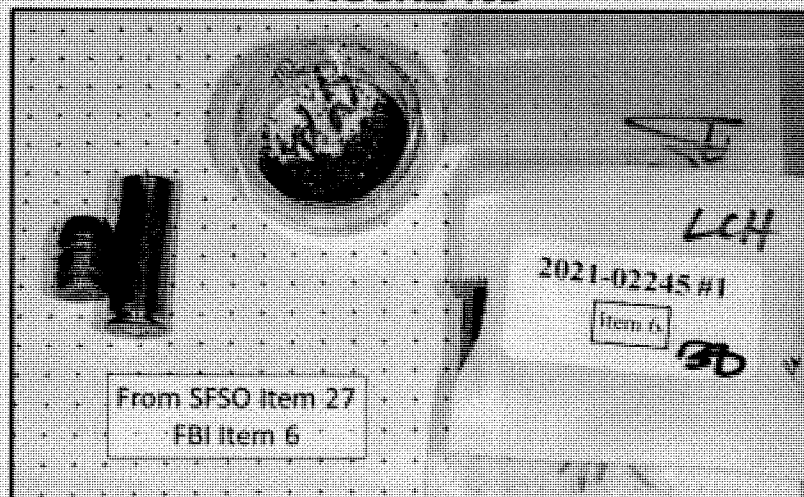
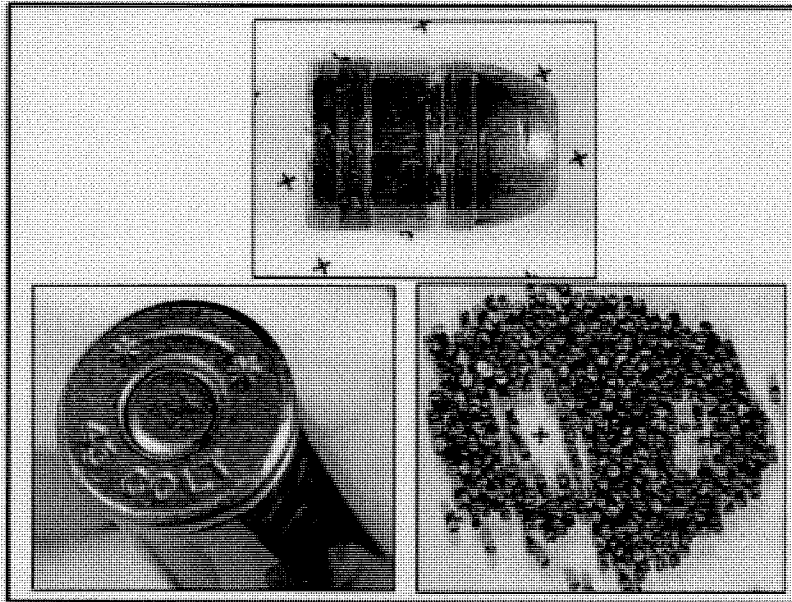


EXHIBIT B

FIGURE 10c



SFSO Item 28

This item consisted of a large, sealed manila envelope with an inner, sealed manila envelope marked "- holster inside building- -"[See Figure 11a] found to contain a previously-disassembled live cartridge of .45 Colt ammunition in a sealed plastic packet. The bullet, cartridge case and propellant in this item were the same as those in SFSO Items 2, 26 and 27. The disassembled Item 28 cartridge is depicted in Figure 11b and Figure 11c.

FIGURE 11a

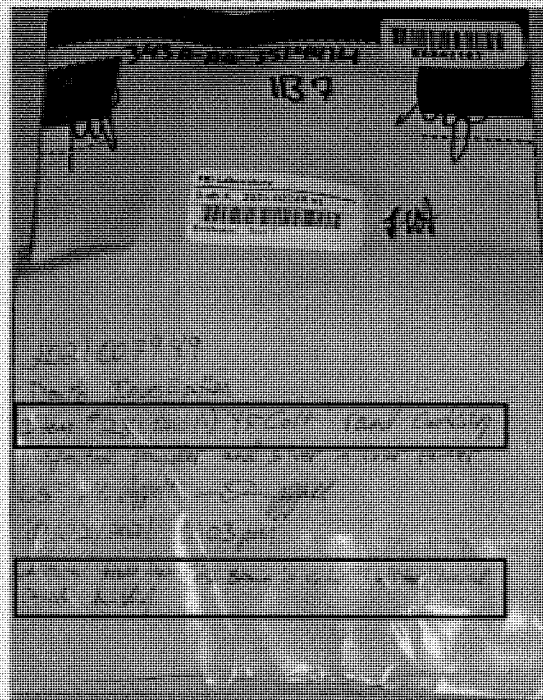


FIGURE 11b

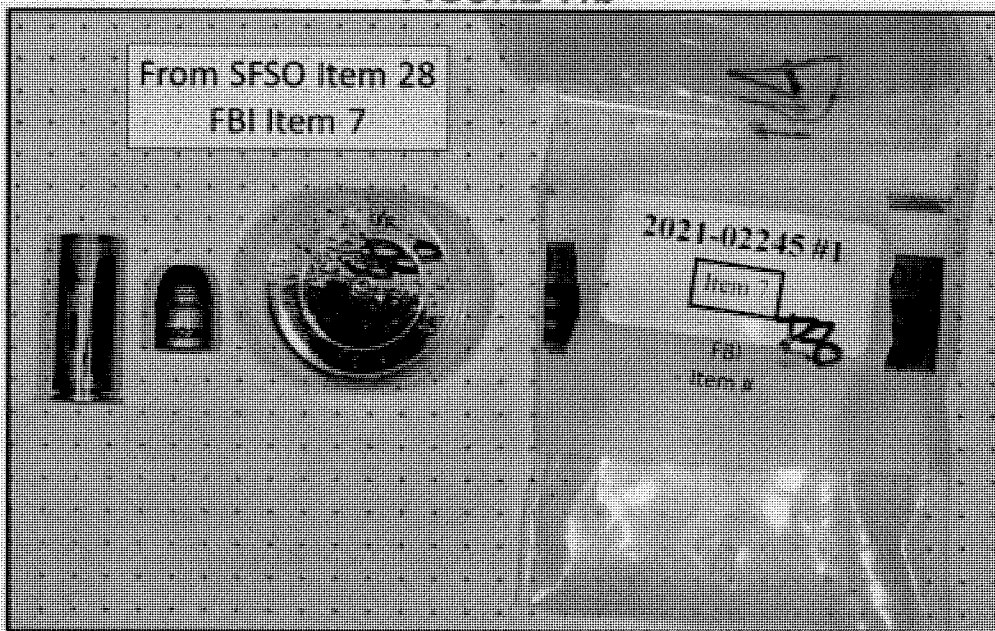
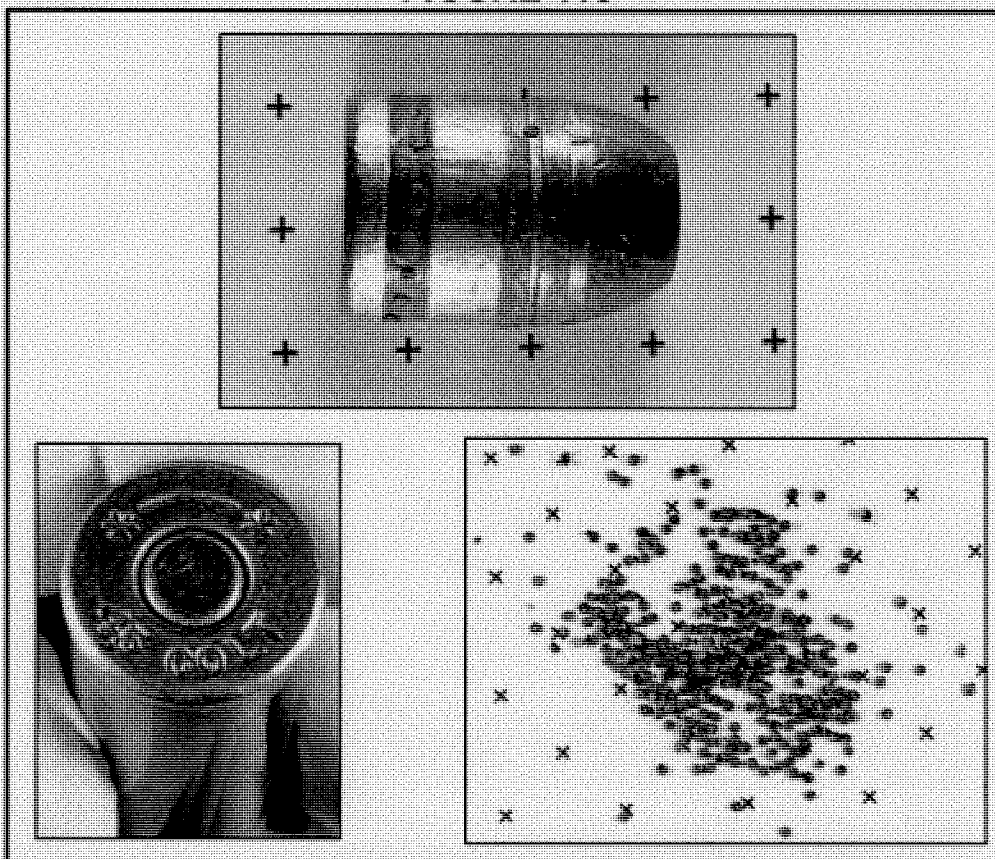


FIGURE 11c





## EXHIBIT B

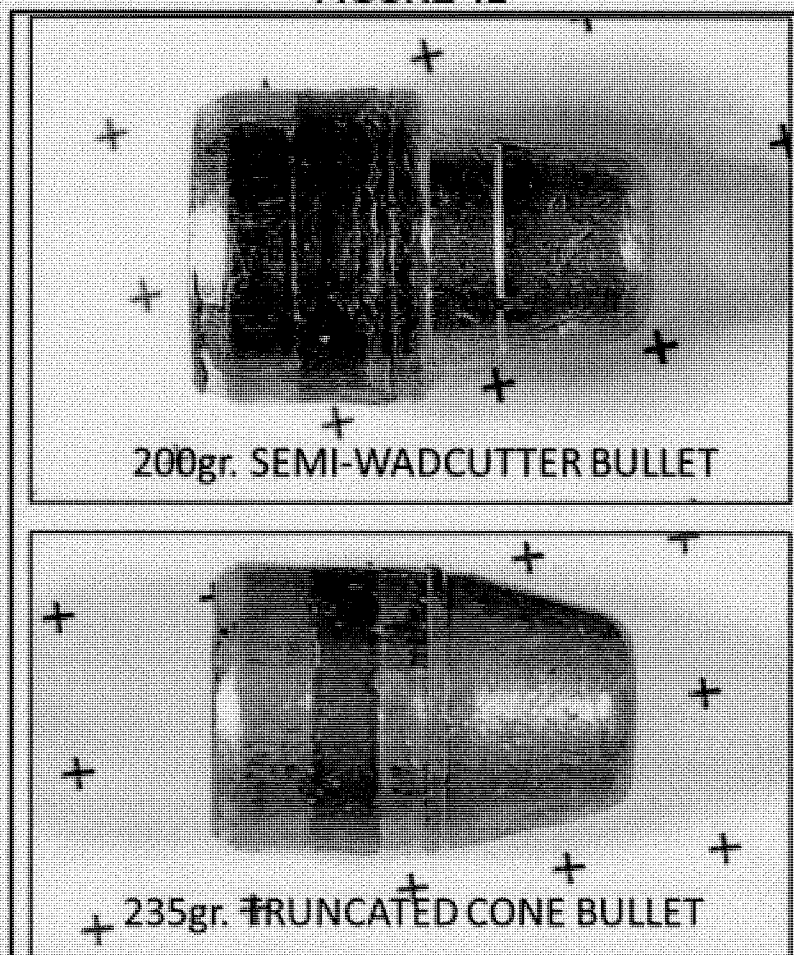
### SUMMARY REGARDING THE FIVE (5) DISASSEMBLED CARTRIDGES

These five cartridges had all been loaded with the same style and weight of .45-caliber cast lead bullets. The cartridge cases were *Starline*™ brand, plain brass cases containing nickel-plated primers and a disk-flake powder comparable in form and particle size to *Bullseye*™ Pistol Powder. The design and manufacturing characteristics of these bullets were in agreement with the surviving manufacturing characteristics observed on the evidence bullet, specifically a single, deep lubricating groove (cannelure) approximately 0.1-inch above the bullet's flat base and a flat-nose and a much shallower upper crimping groove. Likewise, these cartridge cases and the fired evidence cartridge case, SFSO Item 3) were all plain brass, *Starline*™ cases containing nickel-plated primers.

### Live Cartridges Collected from Seth Kenney, Albuquerque, NM SFSO Items 211, 235, 236

These cartridges contained semi-wadcutter and truncated cone lead bullets of lighter weights and different design from the SFSO Item 25 evidence bullet collected from Joel Souza. Representative examples of these bullets are depicted in **Figure 12**. These cartridges were previously disassembled by the FBI, and were found, by this writer, to have been loaded with *Trail Boss*™ powder, a propellant specifically designed for lead bullets in handgun cartridges.

FIGURE 12



## EXHIBIT B

### **Fired .45 Colt Cartridge Cases, SFSO Items 143, 144, 145, 146 and 161**

These items contained fired .45 Colt cartridge cases, all of which were listed as having come from the Property Truck at the RUST movie set.

The contents of SFSO Item 143 consisted of sixteen (16) .45 Colt cartridge cases containing brass primers and bearing the *Starline*<sup>™</sup> headstamp. [See **Figure 13**]

SFSO Item 144 contained four (4) .45 Colt cartridge cases with nickel-plated primers and bearing the *Starline*<sup>™</sup> headstamp. [See **Figure 14**]

SFSO Item 145 contained two (2) .45 Colt cartridge cases with brass primers and bearing the *Black Hills Armory*<sup>™</sup> headstamp. [See **Figure 15**]

SFSO Item 146 contained one (1) .45 Colt cartridge case with a brass primer and bearing the *Sellier & Bellot*<sup>™</sup> headstamp. [See **Figure 16**]

SFSO Item 161 contained one (1) .45 Colt cartridge case with a brass primer and bearing the *Winchester*<sup>™</sup> headstamp. [See **Figure 17**]

**FIGURE 13**

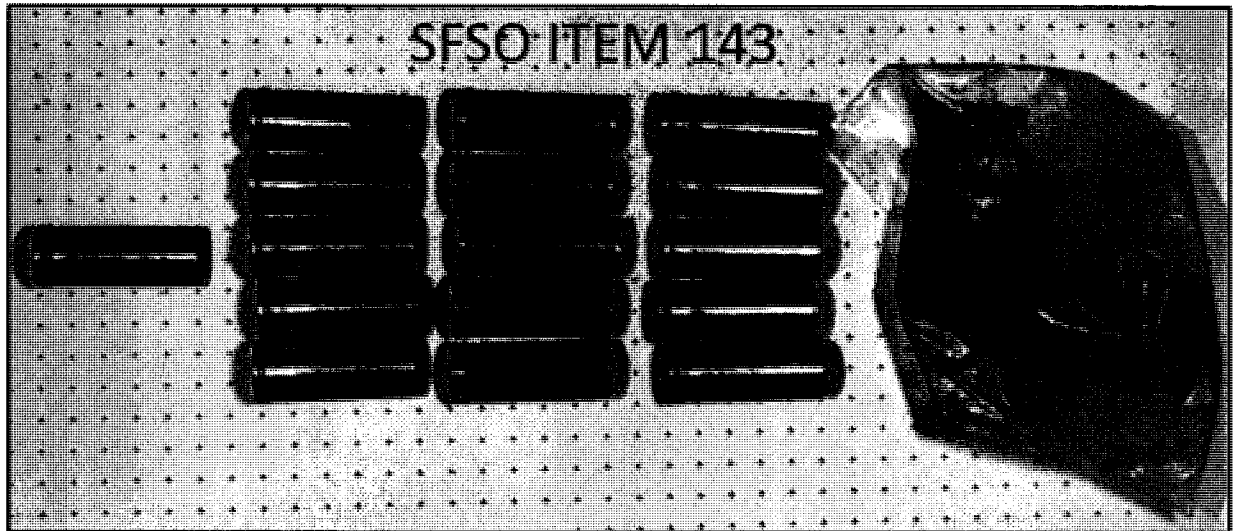


FIGURE 14



FIGURE 15



FIGURE 16

ITEM 146

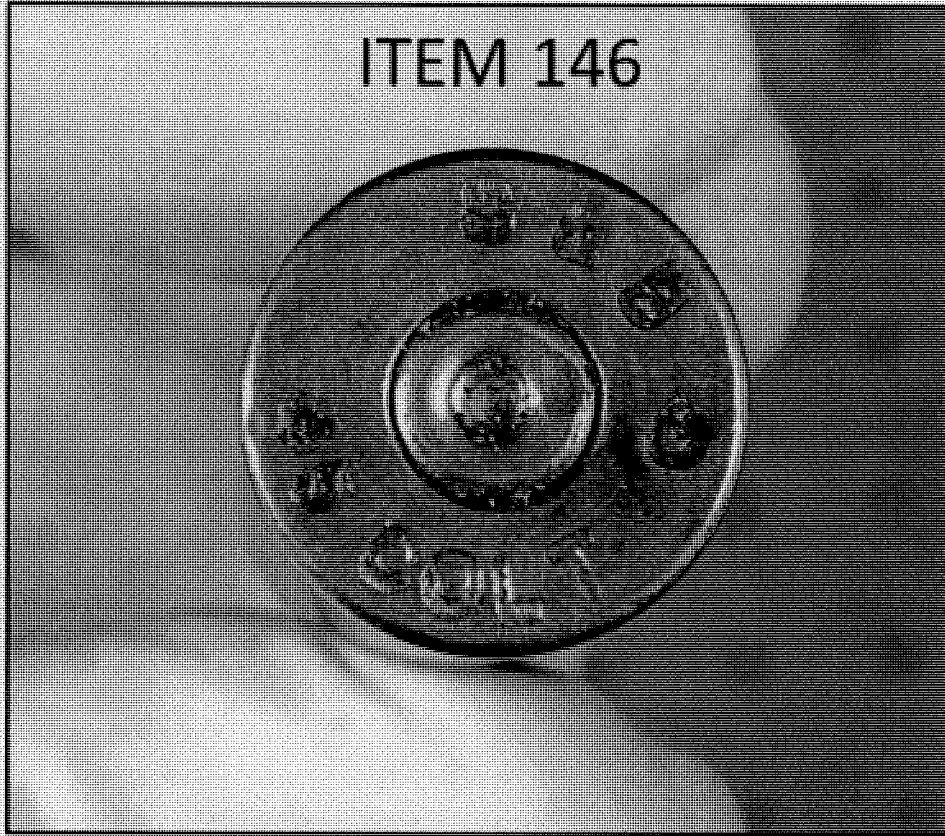


FIGURE 17

SFSO ITEM 161



**Summary for Fired .45 Colt Cartridge Cases, SFSO Items 143, 144, 145, 146 and 161**

These items were described as having been collected from the "prop truck". A minimum of four (4) firearms were represented among the 23 fired cartridge cases in SFSO Items 143, 144, 145 and 146 based on the inter-comparisons of the 3D digital scans of the primers in these items. Additional firearms were indicated but not confirmed due to the paucity of breechface markings in the primers and firing pin impressions. Item 161 is not a fired cartridge.

Test-fired cartridge cases (3 each) from the twelve (12) impounded .45 Colt caliber, single-action revolvers were scanned with the *Evofinder*<sup>™</sup> device. None of the fired cartridge cases in SFSO Items 143, 144, 145 and 146 could be identified as having been fired from the 12 impounded revolvers, SFSO Items 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204 and 205.

**Blanks and Dummy Cartridges**

*Blanks* do not contain a projectile, nor can one be inserted in a blank cartridge. Their customary purpose insofar as Western movies or period reenactments is to make noise and smoke upon discharge in a firearm for which they are designed. The propellant employed for such purpose is either traditional black powder or one of the contemporary, black powder substitutes. All these propellants leave copious solid residues in the bores and chambers of the firearms in which they are discharged. Such heavy residues were observed in several of the impounded revolvers. FSO Item 2 contained a full, 50- cartridge carton of unfired, .45 Colt blank cartridges. This item appears in **Figure 18a** after five (5) representative blank cartridges have been removed. **Figure 18b** provides an oblique view of one of the blank cartridges and its headstamp. No fired blank cartridges were found among the numerous items of evidence examined in this case.

**FIGURE 18a**

From SFSO ITEM 2

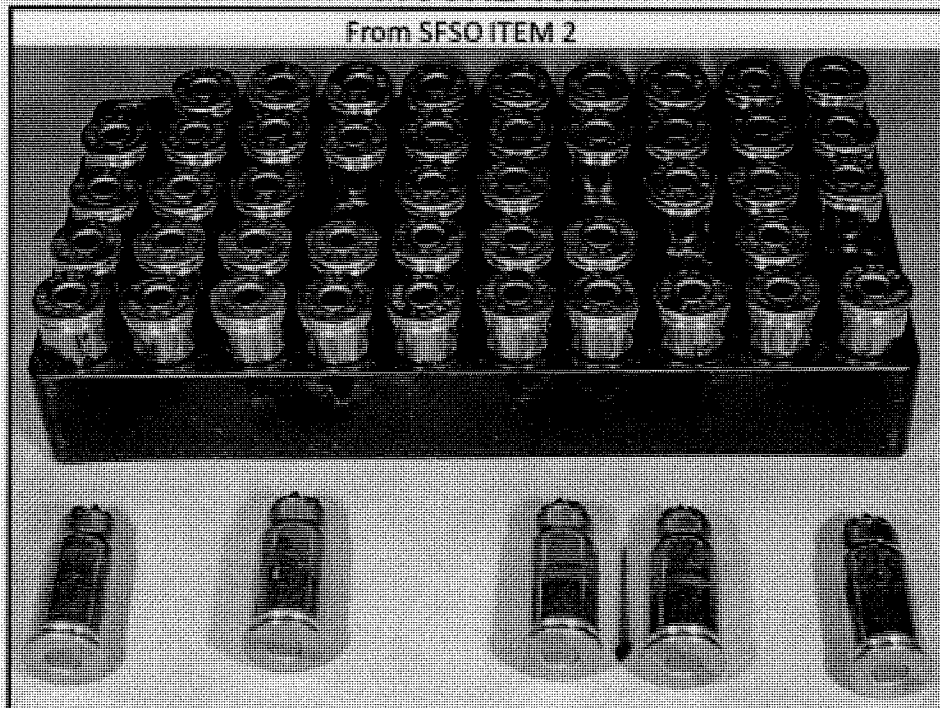
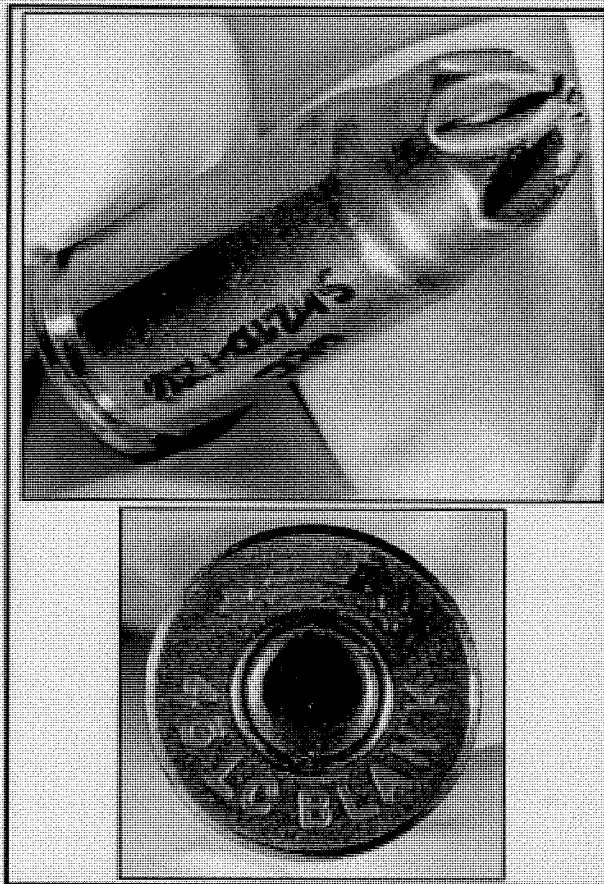


FIGURE 18b



Dummy cartridges, as employed in this case, are intended to look like and to simulate real cartridges, but they are incapable of being fired. When properly assembled, this is insured by the absence of any propellant in the cartridge case and the absence of live primers.

The various .45 Colt dummy cartridges represented in the submitted evidence existed in four (4) forms as follows:

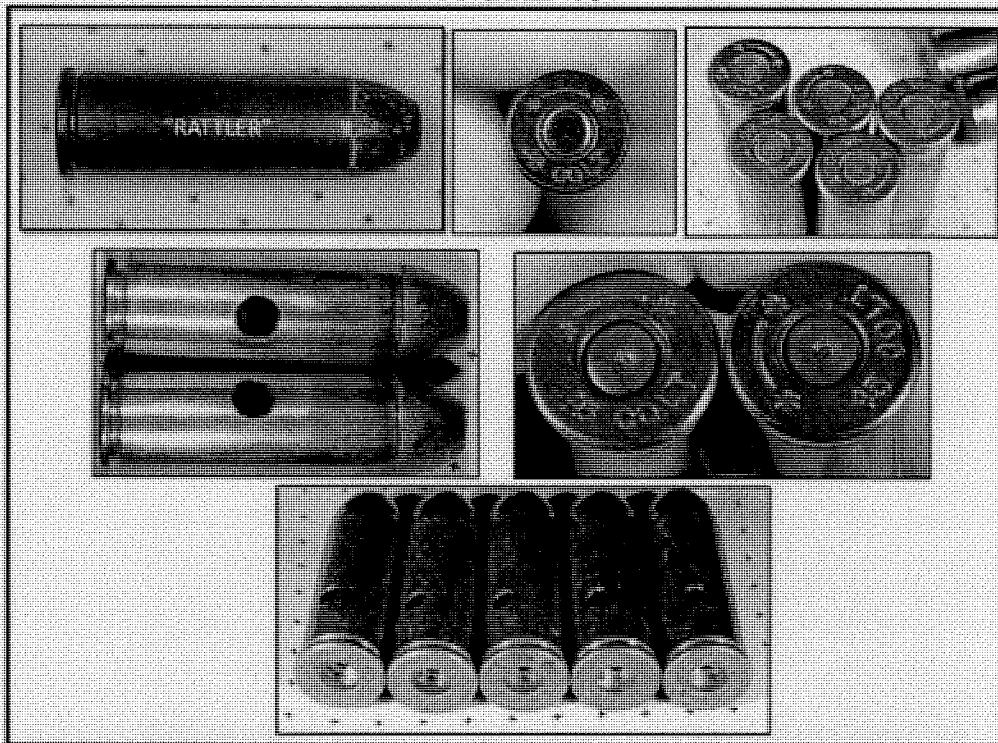
- 1) Brass *Starline*<sup>™</sup> cases with lead round nose-flat point bullets lacking primers (empty primer pockets). Items examined in this category include SFSO Items 84 and 129.
- 2) Brass *Starline*<sup>™</sup> cases with lead round nose-flat point bullets containing simulated brass primers and one or more spherical shot pellets within the cartridge cases to produce an audible rattle when the cartridge is shaken near one's ear. Items examined in this category include SFSO Items 2 (13-2 and 13-3), 29, 30, 46, 47 and 85
- 3) Brass *Starline*<sup>™</sup> cases with lead round nose-flat point bullets containing nickel-plated primers and one or more spherical shot pellets within the cartridge cases to produce an audible rattle when the cartridge is shaken near one's ear. Items examined in this category include SFSO Items 58, 59, 87, 140 and 187.
- 4) Brass *Starline*<sup>™</sup> cases with lead round nose-flat point bullets with a large, readily visible hole in the cartridge case wall. **Figure 19** provides a composite view of the four forms of dummy cartridges and the two primer finishes found in the various SFSO Items examined by this writer. Items examined in this category include SFSO Items 31, 84 and 129.

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The five (5) disassembled cartridges in SFSO Items 2, 26 (2 specimens), 27 and 28 in their originally assembled form could be differentiated from the three forms of dummy cartridges in that they-

- lacked any hole in their case walls,
- would not rattle when shaken,
- possessed unstruck, nickel-plated primers,
- contained bullets that were bright/shiny compared to the often dull, partly oxidized bullets in the dummy cartridges.
- 

**FIGURE 19**



### **SUMMARY: OBSERVATIONS and OPINIONS**

The Pietta M1872 Evidence Revolver, Serial Number E52277, SFSO Item 1

This item was inoperative upon receipt but was returned to proper operating condition following the replacement of the gun's hammer, trigger/sear and bolt. These three parts were dimensionally indistinguishable from and fully interchangeable with the broken parts. Once installed, the evidence revolver was found to function properly and in accordance with the original Colt 1873 single-action revolver. This included the timing and alignment of the cylinder and one of its six chambers with the axis of the barrel just as the retracting of the revolver's external hammer was manually drawn to the full-cock position.

The half-cock and quarter-cock positions on the original hammer and the substitute hammer were intact and fully capable of fulfilling their intended purposes of providing a loading position and safety position for the hammer. They also provide a means of capturing the retracted hammer in situations where there is a loss of control (grasp) of the

## EXHIBIT B

hammer during the manual retraction process *before* reaching the fully cocked position or during a failed attempt to lower a previously cocked hammer.

The average force, in pounds, necessary to discharge this firearm with replacement parts was found to be  $1.9\pm 0.3$  pounds for six (6) measurements with the *TriggerScan*<sup>™</sup> device. These tests yielded an average trigger pull value of  $1.9\pm 0.3$  pounds with the highest result at 2.3 pounds and the lowest result at 1.7 pounds. This 1.9-pound value is in close agreement with the FBI Laboratory value of 2 to 2½ pounds. It is also in good agreement with the  $2.1\pm 0.6$  pounds average for the nine (9) impounded Pietta .45-caliber, single-action revolvers.

The amount of rearward trigger movement necessary to release the hammer from its full-cock position and fire a live cartridge was approximately 0.10-inches. This value was in close agreement with that of a new, Pietta M1873 single-action revolver (0.11-inches) and noticeably greater than the 0.068-inch average for the nine (9) impounded Pietta .45-caliber, single-action revolvers..

### The Evidence Cartridge Case, SFSO Item 3

This item consisted of a spent, .45 Colt brass cartridge case, bearing the *Starline*<sup>™</sup> headstamp with a nickel-plated primer.

It was determined to have been fired in the previously described evidence revolver, SFSO Item 1.

Its nickel-plated primer possessed a normal-appearing firing pin impression (FPI) which measured 0.026-inches in depth. This value is in good agreement with 24 measurements taken on six (6) cartridges discharged in the evidence revolver by this writer which yielded an average FPI depth of  $0.029\pm 0.003$ -inches with high and low values of 0.032-inches and 0.024-inches respectively. Twenty-two (22) measurements on eleven (11) FBI-generated test-fired cartridges from the evidence revolver produced an average FPI depth of  $0.028\pm 0.003$ -inches with high and low values of 0.032-inches and 0.022-inches respectively.

### **Summary**

The fired evidence cartridge is the consequence of a normal hammer fall from the fully cocked position of the hammer.

### Five Previously Disassembled .45 Colt Cartridges, SFSO Items 2, 26, 27, 28

These five cartridges had all been loaded with the same style and weight of .45-caliber cast lead bullets. The bullets were 250-gr, hard-cast, .45-caliber, lead round nose-flat point bullets. The cartridge cases were virgin *Starline*<sup>™</sup> brand, plain brass cases containing nickel-plated primers and a disk-flake powder comparable in form and particle size to *Bullseye*<sup>™</sup> Pistol Powder.

the design features of these bullets were in agreement with the surviving class characteristics features of the evidence bullet, namely a single, deep lubricating groove (cannelure) approximately 0.1-inch above the bullet's flat base, an upper, crimping groove in a comparable location and a flat-nose. [ See **Figure 20**] Likewise, these cartridge cases



## EXHIBIT B

and the fired evidence cartridge case, SFSO item 3, were all plain brass, *Starline*<sup>™</sup> cases containing nickel-plated primers.

**FIGURE 20**



### The Evidence Bullet, SFSO Item 25

This fired, cast lead bullet has experienced substantial terminal ballistic damage and deformation. It is consistent with having been fired through a heavily fouled bore to the extent that it possesses a slightly reduced diameter and only shows remnants of the firearm's rifling marks on one side of the bearing surface of this bullet.

The general design features which have survived discharge and impact with two gunshot victims are that of a hard cast lead, round nose-flat point bullet with a single, deep lubricating groove (cannelure) approximately 0.1-inch forward of the bullet's flat base and faint, surviving traces of an upper crimping groove.

The SFSO Item 25, is similar to the bullets from the five (5) previously disassembled live cartridges of SFSO Items 2, 26, 27 and 28 and is *dissimilar* to the bullets in the ammunition obtained from Seth Kenney, SFSO Items 211, 235 and 236.

### The Fatal Incident

From an examination of the fired cartridge case and the operationally restored evidence revolver, this fatal incident was the consequence of the hammer being manually retracted to its fully rearward and cocked position followed, at some point, by the pull or rearward depression of the trigger. The only conceivable alternative to the foregoing would be a situation in which the trigger was already pulled or held rearward while retracting the hammer to its full cock position. Although unlikely and totally contrary to the normal operation of these single action revolvers, such improper handling, would result in the discharge of a live cartridge.

At the moment of discharge, the evidence revolver was pointed at Halyna Hutchins behind whom was Joel Souza.

The bullet passed completely through Halyna Hutchins then nearly passed through Joel Souza ending up just under the skin of his back from which it was removed at the hospital.

## EXHIBIT B

Although Alec Baldwin repeatedly denies pulling the trigger, given the tests, findings and observations reported here, the trigger had to be pulled or depressed sufficiently to release the fully cocked or retracted hammer of the evidence revolver.

If the hammer had not been fully retracted to the rear, and were to slip from the handler's thumb without the trigger depressed, the half cock or quarter cock notches in the hammer should have prevented the firing pin from reaching any cartridge in the firing chamber. If these features were somehow bypassed, a conspicuously off-center firing pin impression would result.

Three (3) frames from one of the videos submitted to this writer on April 19, 2023, and two (2) frames from a second video received on that same date are useful in evaluating his account of this incident.

**figures 21a, 21b and 21c** show Mr. Baldwin cocking the silver-colored hammer of a long-barreled revolver with his right index finger ending up on or near the trigger.

This description of the revolver in the video corresponds to the evidence revolver.

**FIGURE 21a**

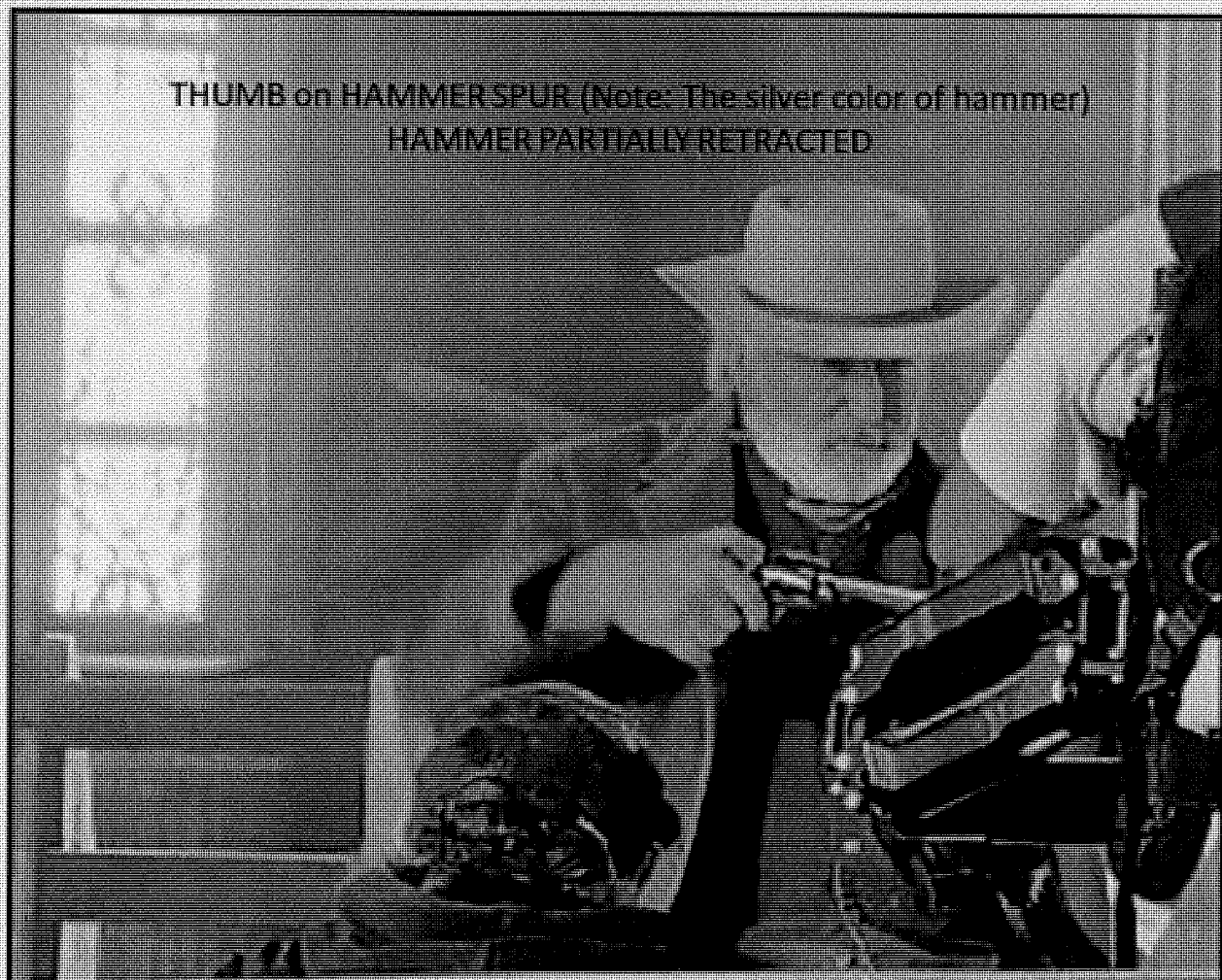


FIGURE 21b

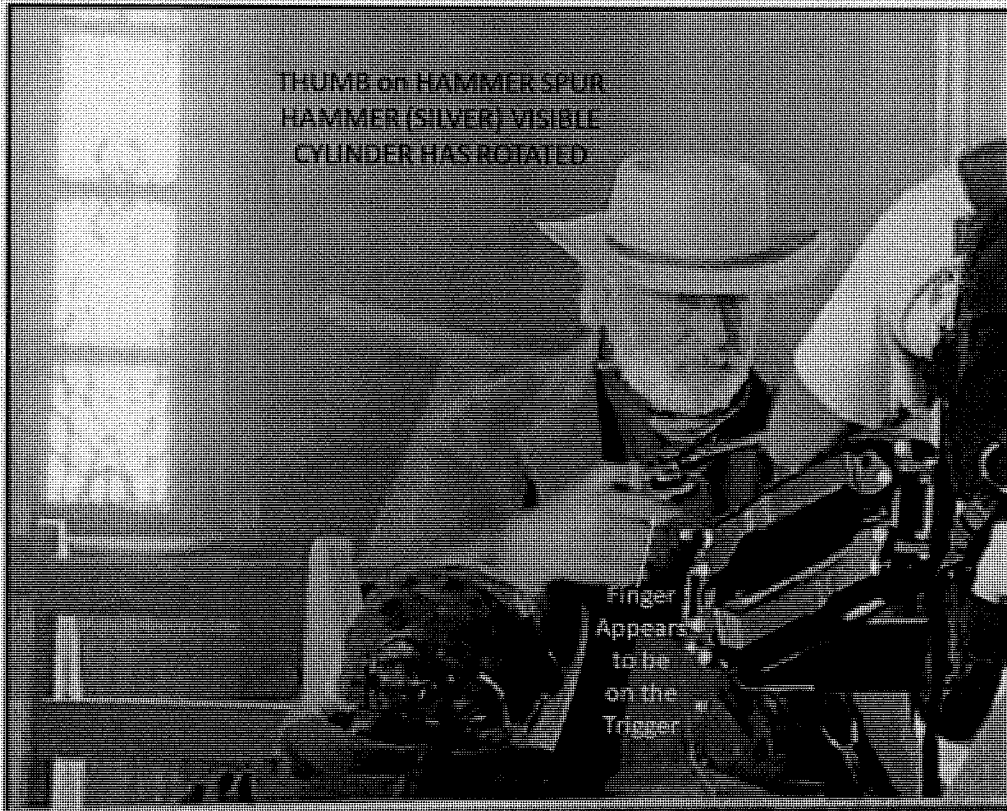


FIGURE 21c

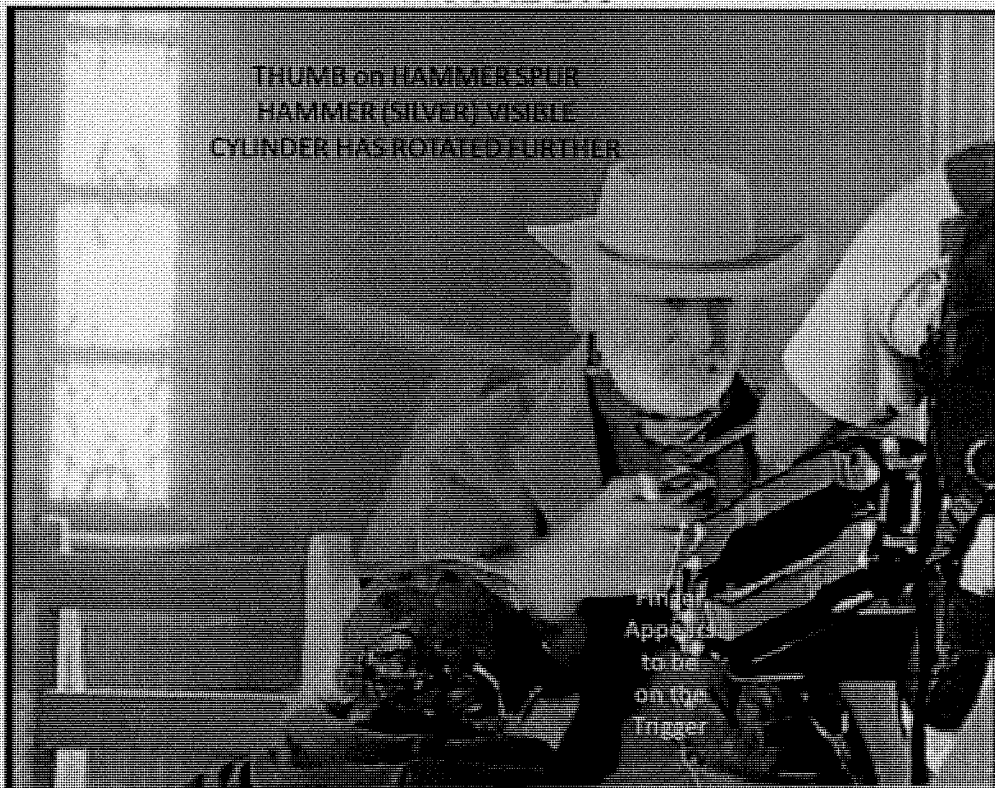
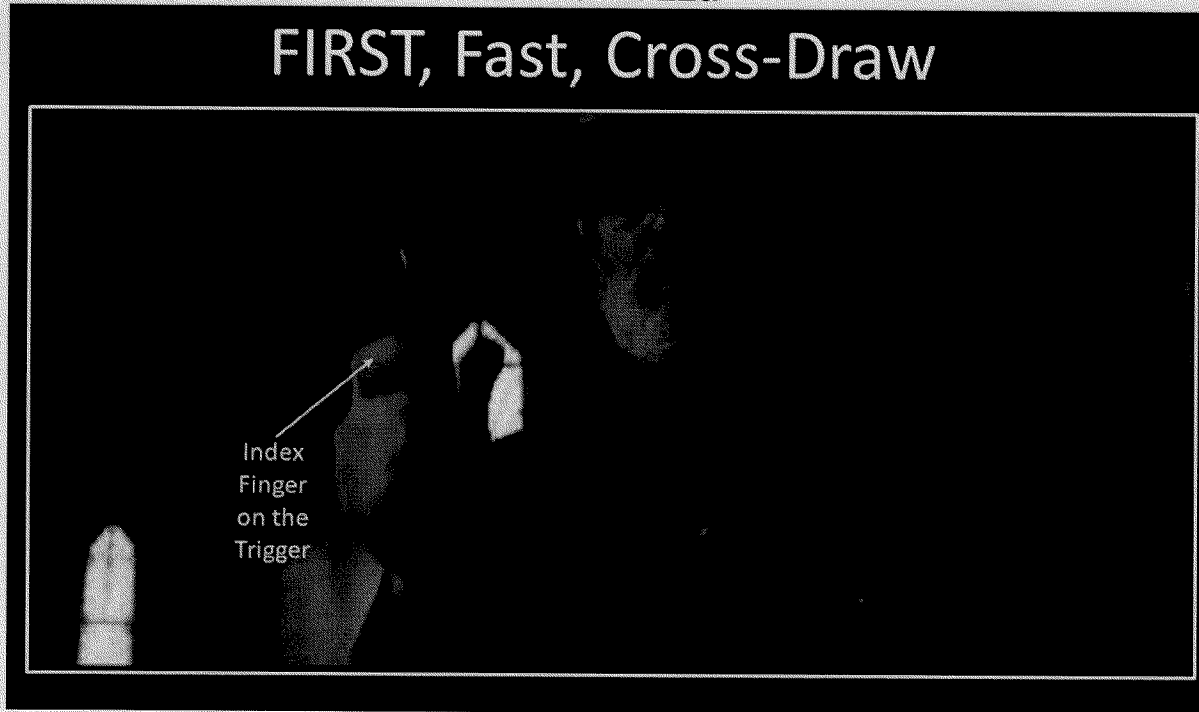


EXHIBIT B

**Figures 22a and 22b**, taken from the second video, shows two frames from two fast-draw demonstrations in which Mr. Baldwin's right index finger is inside the trigger guard and either on, or near the trigger. His thumb is not in contact with the hammer.

**FIGURE 22a**



**FIGURE 22b**

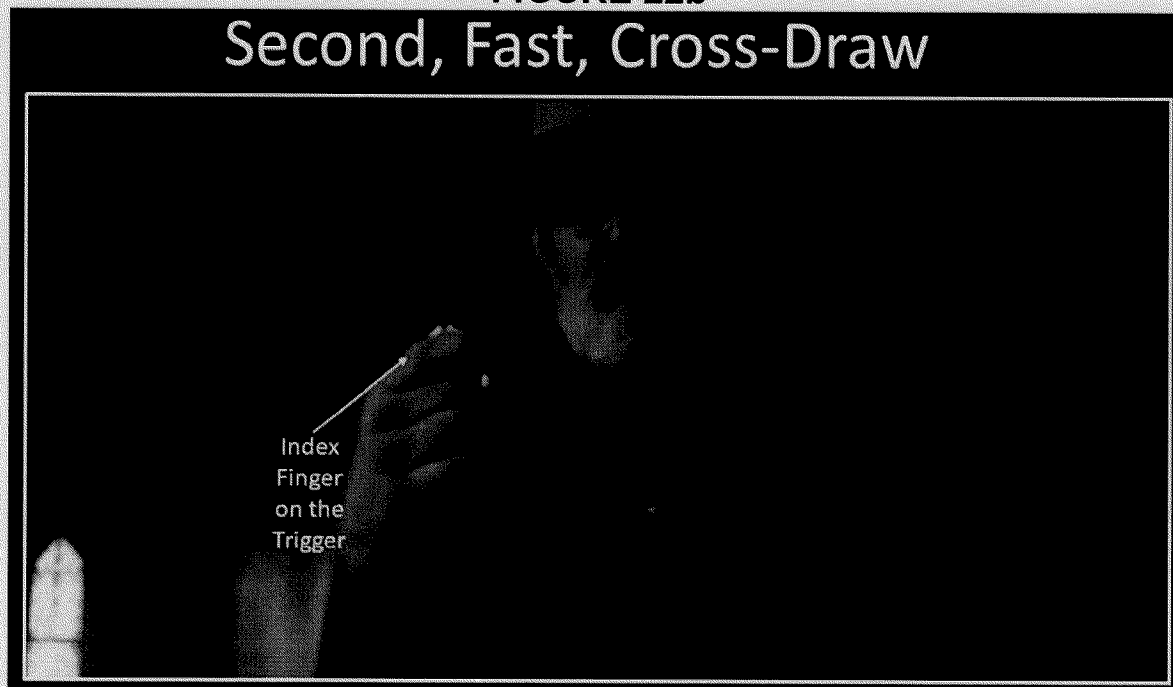
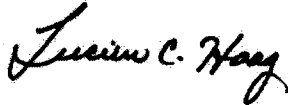


EXHIBIT B

Disposition of the Evidence

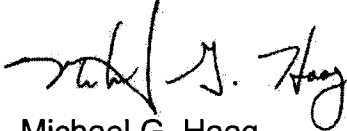
At the conclusion of the examinations, the evidence items were returned to their original containers, resealed with the seals initialed and dated for the return to the SFSO Property Facility. This occurred on the morning of August 2, 2023 at 9:30am.

Signed,



Lucien C. Haag  
Forensic Science Services, Inc.  
Carefree, Arizona

Technical and Administrative Review



Michael G. Haag  
Forensic Science Consultants  
Albuquerque, New Mexico

# **EXHIBIT 6**

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**From:** Luke Nikas <lukenikas@quinnemanuel.com>  
**Sent:** Wednesday, November 1, 2023 1:24:29 PM  
**To:** Kari Morrissey <ktm@morrissylewis.com>; Jason J. Lewis <jjl@jjllaw.com>  
**Cc:** Alex Spiro <alexspiro@quinnemanuel.com>  
**Subject:** Re: Call Re: Target Notice

Kari,

Your email simply restates the statutes, which I can read, without providing the underlying theories you know I am asking for to ensure this process is done properly and efficiently. I will assume you are not interested in conferring in good faith on this matter unless I hear otherwise, since we are available on days other than tomorrow to discuss and I'm sure you are as well.

Luke Nikas  
Partner  
Quinn Emanuel Urquhart & Sullivan, LLP

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New York, NY 10010  
212-849-7228 Direct  
212-849-7000 Main Office Number

212-849-7100 FAX  
475-558-9881 Home Office  
lukenikas@quinnemanuel.com  
www.quinnemanuel.com

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**From:** Kari Morrissey <ktm@morrisseylewis.com>  
**Sent:** Wednesday, November 1, 2023 1:00:49 PM  
**To:** Luke Nikas <lukenikas@quinnemanuel.com>; Jason J. Lewis <jjl@jjllaw.com>  
**Cc:** Alex Spiro <alexspiro@quinnemanuel.com>  
**Subject:** Re: Call Re: Target Notice

[EXTERNAL EMAIL from ktm@morrisseylewis.com]

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Luke

We are not available tomorrow morning. We are in pretrial interviews in the Gutierrez case.

Involuntary manslaughter consists of manslaughter committed in the commission of an unlawful act not amounting to felony (in the case of Mr. Baldwin it is the unlawful act of negligent use of a firearm).

He is also charged in the alternative as follows: in the commission of a lawful act which might produce death in an unlawful manner or without due caution and circumspection.

Kari

On 11/01/2023 10:26 AM MDT Luke Nikas <lukenikas@quinnemanuel.com> wrote:

Kari and Jason,

Your target notice identifies two involuntary manslaughter charges on which you will be presenting information to the grand jury. To ensure the alert letter we submit addresses the actual theories you are contemplating and does not create unnecessary work for us or for you by addressing theories you do not intend to pursue, please let me know if you are available tomorrow morning for a brief call to discuss.

Luke Nikas

Partner

Quinn Emanuel Urquhart & Sullivan, LLP

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