

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

STATE OF NEW MEXICO,
Plaintiff,

v.

D-101-CR-2024-00013

ALEC BALDWIN,
Defendant.

**STATE'S MOTION IN LIMINE 7 TO PROHIBIT
USE OR TESTIMONY OF OHSB SUMMARY OF INVESTIGATION**

COMES NOW, Special prosecutors, Kari T. Morrissey and Erlinda O. Johnson, who respectfully request this court exclude evidence and testimony related to the findings of the Occupational Health and Safety Bureau (OHSB) and as grounds state as follows:

1. Upon information and belief, the defendant intends to present evidence and/or testimony related to the investigation and findings related to the workplace safety violations on the set of *Rust* as determined by New Mexico OHSB.
2. The OHSB is tasked with implementing and enforcing the New Mexico Occupational Health and Safety Act and investigating employee complaints about workplace safety (*See* https://www.env.nm.gov/occupational_health_safety). The purpose of the New Mexico Occupational Health and Safety Act is to “assure every employee safe and healthful working conditions.” NMSA 50-9-2. As such, OHSB investigators are tasked with investigating and enforcing New Mexico law.
3. After the fatal shooting on the set of *Rust*, the OHSB conducted an investigation and issued a Summary of Investigation. (*See* State’s Attached Exhibit). OHSB investigators were unable to review the voluminous police report(s) prior to issuing its Summary because the OHSB is required to complete its investigation and issue any penalties for

noncompliance within six months of the date of incident (50-9-17(A) NMSA) and the Santa Fe County Sheriff's Department did not release its report(s) until nearly one year after the date of incident. OHSB completed its investigation and issued the citation to Rust Productions on April 19, 2022.

4. The OHSB investigators/officers failed to interview all of the relevant witnesses. For example, OHSB failed to interview Zac Sneesby, Ross Addiego, Lucas Hussack and Reese Price, all of whom were present in the church at the time of the shooting. OHSB also failed to interview Seth Kenney (the firearms/ammo vendor) and Row Walters (the Unit Production Manager). OHSB investigators also failed to interview other crew members who would have provided statements concerning the level of control Mr. Baldwin exercised over the set and his relentless rushing of crew members such as. The OHSB investigators failed to obtain the video footage from the filming of Rust that would have shown how firearms were being handled unsafely on set on numerous occasions by Alec Baldwin. OHSB investigators failed to take statements from the primary sheriff's detective investigating the circumstances of the death of Ms. Hutchins, failed to consult with any experts in the film industry and failed to review and consider all of the employment contracts for the producers and managers.
5. The Summary contained a finding that Rust Management failed to ensure proper safety procedures on the set as they pertain to firearms. As a result, Rust Productions was ultimately fined \$100,000.00 by the OHSB. The standard of proof for the issuance of the citation is by the OHSB to the employer is "good cause to believe that any employer is violating any provision of the Occupational Health and Safety Act...". NMSA § 50-9-17. The standard of proof applied in OHSB investigations is perhaps the lowest standard

under the law where the standard of proof in a criminal case is the highest standard under the law.

6. As clearly articulated in 50-9-17, the job of OHSB investigators is to investigate employer liability, not the liability of employees. For example, the OHSB findings and conclusions found no fault on the part of Ms. Gutierrez who a New Mexico jury found guilty almost immediately of loading a live round into the prop gun, declaring it “cold,” handing it to Dave Halls and leaving the room just prior to Mr. Baldwin shooting and killing Ms. Hutchins. The Summary found that Ms. Pickle was responsible for the reckless actions of Ms. Gutierrez, the same actions that caused a jury to find Ms. Gutierrez guilty of involuntary manslaughter.
7. The Summary acknowledged that Mr. Baldwin violated the basic rules of firearms safety by pointing the gun at crew members, discharging the gun and killing a person but OHSB investigators found “Rust management representative Dave Halls was present prior to and at the time the firearm discharged a live round, severely injuring two crew members. As Rust’s top-level management safety official, Mr. Halls did not consult with the Property Master or Armorer during or after the firearm was loaded, handed to the actor, and pointed toward crew members in order to determine that pointing the firearm at persons was “absolutely necessary.” Undersigned counsel has never seen a statement by Mr. Halls (who has given numerous statements to date) or any other crew member that would support the assertion that Mr. Halls knew Mr. Baldwin was going to point the gun at people and discharge it or had any opportunity to stop Mr. Baldwin from engaging in this activity. The Safety Bulletins clearly prohibit the gun handler (not the armorer or First Assistant Director) from pointing the gun at others and pulling the trigger. Yet,

OHSB investigators found that Mr. Baldwin's actions were the fault of Mr. Halls. *See* State's Exhibit page 8 and 9.

8. Testimony concerning the OHSB Summary of Investigation should be excluded because
 - 1) The Summary and its findings are irrelevant under 11-401 NMRA, and if the Court finds they meet the test for relevance they are more prejudicial than probative under 11-403 NMRA; 2) the OHSB is a law enforcement agency and its report should be excluded under the public records exception pursuant to 11-803(8)(b) for law enforcement; 3) results in jury confusion and usurps the jury's fact-finding role due to the Summary's many legal conclusions; and 4) the Summary contains numerous instances of hearsay within hearsay. The State is not asking the Court to exclude the statements of witnesses made to OHSB investigators if they are needed by either party for refreshment or impeachment as prior inconsistent statements pursuant to 11-607, 11-612 and 11-613 NMRA.
9. The Rules of Evidence define relevant evidence as evidence as having "any tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in determining the action." *See* 11-401 NMRA. Summary of Investigation is entirely irrelevant to whether or not Mr. Baldwin is criminally liable for the death of Ms. Hutchins. The OHSB findings simply determined that Rust Management was liable as an employer for violating the New Mexico Occupational Health and Safety Act. OHSB investigators failed to recognize Mr. Baldwin as Rust Management because they never bothered to review his producer contract.
10. Rule 11-403 states "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice,

confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Mr. Baldwin is charged criminally with involuntary manslaughter for the death of Halyna Hutchins. Mr. Baldwin is accused of failing to participate in a safety check of the gun and the ammunition in the gun with the armorer and, after failing to participate in the safety check, he pointed the gun at Ms. Hutchins and Mr. Souza, cocked it and pulled the trigger. As stated above, the OHSB investigates workplace safety that threatens the health and well-being of employees. The OHSB Summary of Investigation and testimony concerning the investigation has little to no relevance to the criminal charge of involuntary manslaughter, results in unfair prejudice to the State, would serve to confuse the issues between employer liability and individual criminal culpability and mislead the jury into considering legal conclusions about fault and liability in a completely unrelated proceeding. The jury should not be misled and confused by the findings of an investigation requiring such a low standard of proof and lacking in completeness performed by an agency that is not tasked with finding fault with individuals, but with employers.

11. OHSB investigators are law enforcement officers who investigate and enforce the New Mexico Occupational Health and Safety Act. The Summary is just like any other law enforcement officer’s report, it contains statements of witnesses and determinations of law violations. The Summary is based entirely on the interviews conducted and observed by Mr. Montoya and as such should be excluded for the same reason other law enforcement reports are excluded – the officer must be present to testify about the report and investigation and be subject to cross-examination. “[T]he purpose of excluding the reports of law enforcement personnel from admissibility under Rule 11-803(H) is to

ensure that officers who engage in investigative and prosecutorial activities testify.

State v. Delgado, 146 N.M. 402, 405-406, 2009-NMCA-061, 12, 210 P.3d 828, 831-832, 2009 N.M. App. LEXIS 68 (2009). (See also *AMPAT/Midwest v. Illinois Tool Works*, 896 F.2d 1035, 1045 (7th Cir. 1990) finding that business documents prepared with litigation in mind are not admissible because litigation is not a regularly conducted business activity and because there may be an obvious motive to misrepresent).

12. The State has developed sizeable evidence that Mr. Baldwin was a significant cause of the death of Halyna Hutchins by failing to follow the most basic firearm safety protocols and failing to follow the Safety Bulletins promulgated by the labor unions for the film industry (including his own union) and disregarding basic firearms safety rules applicable outside the film industry. The State has further developed significant evidence that Mr. Baldwin pointed his real prop gun at crew members on other occasions, manipulated his gun unnecessarily and without proper supervision and rushed the armorer and other crew members to work more hastily. The defendant will likely attempt to use the findings by the OHSB to try to minimize his culpability and confuse the jury by arguing that he is not responsible for the shooting because Rust Management is responsible for safety violations that led to the tragedy. If the defendant chooses to present a defense that he is not responsible for the death of Ms. Hutchins, he can take testimony from the same witnesses that were interviewed by the OHSB investigators at his trial. It is not appropriate to use the finding and conclusions formed by the OHSB investigators to confuse the jury with legal findings and conclusions from an investigation into Rust Productions, L.L.C. “[O]pinion testimony that seeks to state a legal conclusion is inadmissible. See *First Nat’l Bank in Albuquerque v. Sanchez*, 112 N.M. 317, 324, 815

P.2d 613, 620 (1991) (the trial court has "the exclusive province and responsibility" of telling the jury whether conduct is or is not "legal"); *Beal v. Southern Union Gas Co.*, 66 N.M. 424, 436-37, 349 P.2d 337, 346 (1960) (neither expert nor non-expert witnesses are permitted to give opinions on questions of law). *State v. Clifford*, 117 N.M. 508, 513, 1994-NMSC-048, 20, 873 P.2d 254, 259.

1. The OHSB investigator, Lorenzo Montoya, must be prohibited from testifying to the findings and conclusions related to the OHSB investigation. Mr. Montoya's testimony would only serve to provide his legal conclusions as to who was or was not responsible for the death of Ms. Hutchins – that is the sole province of the jury. Permitting Mr. Montoya's testimony will only serve to confuse and mislead the jury and usurp the jury's factfinding role. As such testimony concerning the OHSB investigation, findings and conclusions must be excluded. Simply put, the jury will be confused by evidence that indicates that a legal finding was issued against Rust Management for safety failures on set while trying to determine whether Mr. Baldwin is guilty of involuntary manslaughter for his own failure to follow basic firearm safety protocols. Courts have long held that witnesses, even expert witnesses, may not provide legal conclusion to the jury. "Federal Rule of Evidence 704(a) expressly permits an expert to testify about an ultimate issue of fact. But that testimony must be helpful to the jury. Fed. R. Evid. 702. To ensure testimony is helpful, "[a]n expert may not state legal conclusions drawn by applying the law to the facts, but an expert may refer to the law in expressing his or her opinion." *United States v. Richter*, 796 F.3d 1173, 1195 (10th Cir. 2015) (quoting *United States v. Bedford*, 536 F.3d 1148, 1158 (10th Cir. 2008)). *Owners Ins. Co. v. Sec. Nat'l Ins. Co.*, 2024 U.S. Dist. LEXIS 23559, 13, 2024 WL 531250.

2. It is anticipated that the defendant will attempt to have the OHSB Summary of Investigation admitted into evidence as a business record or a public record pursuant to 11-803(6) and (8). 11-803(6) states “Records of a regularly conducted activity. A record of an act, event, condition, opinion, or diagnosis if (a) the record was made at or near the time by — or from information transmitted by — someone with knowledge, (b) the record was kept in the course of a regularly conducted activity of a business, institution, organization, occupation, or calling, whether or not for profit, (c) making the record was a regular practice of that activity, and (d) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 11-902(11) or (12) NMRA or with a statute permitting certification. This exception does not apply if the opponent shows that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. *Id.*
3. Any argument by the defendant that the Summary of Investigation should be admitted into evidence as a business record is without merit. The rule requires that the record be made at or near the time of the event. The Summary of Investigation was made nearly six months after the event by Mr. Montoya – not someone with direct knowledge of the event. Moreover, the Summary and its findings lack trustworthiness.
4. The findings and conclusions lack trustworthiness pursuant to 11-803(6) and 11-803(8) for the following reasons: 1) The OHSB found in paragraph 10 of the Summary of Investigation that Mr. Baldwin’s authority on set included approving script changes and actor candidates; 2) The OHSB found in paragraph 11 that Hannah Gutierrez “reported to Sarah Zachry for direction on daily tasks; 3) The OHSB found in paragraph 12 that Ms. Gutierrez was only allowed eight paid days at the armorer pay rate; and 4) The OHSB

found in paragraph 13 that Rust ordered ammunition from PDQ Props. The findings in paragraphs 11, 12 and 13 of the Summary lack trustworthiness as they are easily proven false.

5. First, Mr. Baldwin's authority on set far exceeded the approval of script changes and actor candidates. Mr. Baldwin's producer contract states "Lender (the Lender was Mr. Baldwin's production company, El Dorado Pictures, Inc.) shall cause Artist (Alec Baldwin) to render all pre-production, production, and post-production services reasonably requested by Production Company (Rust Productions, LLC) and customarily rendered by individual Producers in the motion picture industry." OHSB investigators got this wrong because they took Mr. Baldwin at his word, rather than requesting and reviewing his contract.
6. Second, Hannah Gutierrez did not report directly to Sarah Zachry for direction on any tasks related to her job as armorer. Ms. Zachry confirmed this on page 51 of her interview with Corporal Hancock on November 29, 2021, and Hannah Gutierrez also confirmed that Ms. Zachry was not her supervisor in her role as armorer on Page 16 of her interview with Corporal Hancock on November 9, 2021.
7. Third, Ms. Pickle explained to OHSB investigators that she approved ten, not eight, days for Ms. Gutierrez to receive the armorer pay rate. Ms. Gutierrez explained to the investigators that it was only eight days. However, Ms. Pickle's approval of the ten days of armorer rate is memorialized in a text message Ms. Pickle sent to Ms. Gutierrez on October 20, 2021, and Ms. Gutierrez acknowledged the additional days.
8. Fourth, Rust Productions ordered ammunition from PDQ Props but several boxes of ammunition, including the box of dummy rounds found to contain the live rounds were

sourced from Ms. Gutierrez herself. This would have been confirmed by Mr. Kenney, had OHSB investigators interviewed him, and it was confirmed by Ms. Gutierrez in her November 9, 2021, interview with Hancock.

9. New Mexico courts have held that “[I]n order for a statement to be admissible under an exception to the hearsay rule it must be "clothed with the indicia of reliability." *State v. Robinson*, 94 N.M. 693, 698, 616 P.2d 406, 411 (1980). The OHSB Summary and its findings and conclusions are completely untrustworthy on their face due to the incomplete nature of the investigation and are easily contradicted by more reliable evidence.
10. Even if the Court were to decide that the Summary of Investigation met the requirements of 11-803(6) and 11-803(8) the Summary presents more complicated evidentiary issues that prevent its admissibility because it contains hearsay within hearsay and as such the Summary and the hearsay statements included in the Summary both must satisfy an exception to the exclusion of hearsay. 11-805 NMRA. The business records exception does not extend to "statement[s] to [a] business by a stranger to it." *United States v. Vigneau*, 187 F.3d 70, 75(1st Cir. 1999). Such "'outsider' information, where offered for its truth [is inadmissible] unless some other hearsay exception applies to the outsider's own statement." *Id.* at 76. Also see, *Loyd v. Salazar*, (finding that portions of an investigative report were inadmissible under 11-803(6) because the report contained a narrative opinion and the witness statements that did not satisfy the hearsay exception.) See *Loyd*, 2021 U.S. Dist. LEXIS 137623, 5, 2021 WL 3136953. (See also *TK-7 Corp. v. Estate of Barbouti*, 993 F.2d, 722 (10th Cir.1993) finding double hearsay in the context of

a business record exists when the record is prepared by an employee with information supplied by another person).

11. The public records exception to the prohibition against hearsay allows hearsay only if it A) sets out the office's activities, B) a matter observed under a legal duty to report, but not including, in a criminal case, a matter observed by law enforcement personnel, or C) in a civil case, or against the government in a criminal case, factual findings from a legally authorized investigation. The exception does not apply if the opponent shows that the source of information or other circumstances indicate a lack of trustworthiness. NMRA 11-803(8). The Summary lacks trustworthiness under 11-803 for all same reasons outlined above. Similarly, the prohibition on hearsay within hearsay extends to public records, as well. (*See United States v. DeLeon* 316 F. Supp. 3d 1303, 1306, 2018 U.S. Dist. LEXIS 22264, 6, 2018 WL 840014 hearsay within hearsay extends to public record when investigative reports are based on and contain statements from confidential human sources and information conveyed from one law-enforcement member to another) (See also *Kim v. JP Morgan Chase (In re Kim)*, 809 Fed. Appx. 527 (10th Cir. 2020) finding double hearsay in the context of a business record exists when the record is prepared by an employee with information supplied by another person.)

WHEREFORE, for the above stated reasons the state respectfully requests all evidence and testimony of the OHSB findings be excluded.

Respectfully submitted,

/s/ Kari T. Morrissey
Kari T. Morrissey
Erlinda O. Johnson
Special Prosecutors
1303 Rio Grande Blvd. NW, Ste. 5
Albuquerque, NM 87104

T: 505-361-2138

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of June 2024, I served the forgoing pleading to all parties or counsel of record through odyssey file and serve and via email:

/s/ Kari T. Morrissey
Kari T. Morrissey



SUMMARY OF INVESTIGATION

INSPECTION

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

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

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



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

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

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

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

FINDINGS

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



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

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

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

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

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

State of New Mexico

Environment Department
Occupational Health and Safety Bureau
525 Camino de los Marquez, Suite 3
Santa Fe NM 87505
Phone: (505) 476-8700 Fax: (505) 476-8734



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

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

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

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



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

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

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

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

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



CONCLUSIONS

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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



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

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

RECOMMENDATIONS

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