

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,

PLAINTIFF,

VS.

ALEXANDER RAE BALDWIN III,

DEFENDANT.

No. D-0101-CR-2024-0013
Judge Mary Marlowe Sommer

**DEFENDANT ALEC BALDWIN'S EXPEDITED MOTION
FOR DISMISSAL AND SANCTIONS UNDER *BRADY, GIGLIO, AND RULE 5-501 NMRA***

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BACKGROUND

From the moment they arrived on the scene at Bonanza Creek Ranch on October 21, 2021, law enforcement officers focused almost exclusively on a single question: How did live ammunition end up on a movie set, where the presence of live ammunition is—in the words of prosecutors—“incomprehensible.” But the SFSO and the State have concealed from Baldwin that there was evidence that the live round came from Seth Kenney, a known person of interest and supplier of ammunition to the *Rust* set. Specifically, immediately after Gutierrez-Reed’s trial, Troy Teske, a retired police officer and judge pro tempore in Mohave County, Arizona, delivered a collection of live ammunition to the Santa Fe Sheriff’s Office, where they were accepted by CST Marissa Poppell.

The State had been aware and had access to Teske for years. Seth Kenney called Teske during a November 1, 2021 interview with then-Detective Alexandria Hancock, after which Teske sent a picture of a sampling of ammunition that did not match the rounds on set. That image was passed from Kenney to Hancock, and there was no further recorded follow up.

In a November 2, 2023 pretrial interview of Teske, the rounds were again discussed, this time with Special Prosecutor Morrissey. During the interview, Morrissey specifically asked if Teske would give her the ammunition from the batch that Reed and Kenney had used to source their live ammunition for the Texas movie set. *See* Ex. A (Teske PTI) at 26:23-27:11. Teske—who at the time did not know if the ammunition would match the round that killed Hutchins—agreed to provide it, and Morrissey closed out her interview stating that she would work with law enforcement to collect it, the implication of which was that if she ever got the evidence she would turn it over to Baldwin. *Id.*

Morrissey never followed up, and the State elected not to retrieve the rounds, even though Teske had told the State they could retrieve them at any time. The trial of Gutierrez-Reed went forward, and at its conclusion, on March 6, 2024, Teske delivered the collection of rounds to Poppell, where it was taken into the custody of the State by Poppell and her supervisor, Lt. Brian Brandle. The evidence, however, was not inventoried to the *Rust* case. Instead, at Brandle's instruction, Poppell was told to log it as "documented information" rather than physical evidence. And she was told to log it under a *different* case file so that it would never be disclosed to the defense. Teske told Poppell that among the rounds that SFSO took into its inventory and logged under a different case number are Starline brass casings, with nickel primers—matching the live bullet that killed Hutchins.

SFSO's knowledge and possession of the rounds were not disclosed in supplemental disclosures, nor were they presented when the defense requested to view all ballistics evidence at an evidence viewing on April 16, 2024. According to the testimony of CST Poppell, they were tagged with an independent number, unaffiliated with the *Rust* investigation. These facts were elicited on cross-examination, after Poppell had unequivocally testified that *all* of the evidence that had been collected in the case had been inventoried, was stored in the vault at the SFSO station, and could be brought into court at any time. Poppell also admitted that SFSO prepared a supplemental report about this evidence, which also was never disclosed to the defense.

On re-direct, Morrissey immediately demonstrated her familiarity with the above facts, reminded Poppell of Teske's name, and sought to help Poppell reframe her cover-up as an ordinary investigative decision.

ARGUMENT

The State affirmatively *concealed* evidence potentially pointing to an external source of the live ammunition (Seth Kenney) because the evidence would be favorable to Baldwin. The remedy for the State's misconduct should be dismissal.

Baldwin was unaware of a risk that live ammunition had been brought to the set of *Rust*. To support its theory that Baldwin *should* have known of that risk, the State is attempting to establish a link between Baldwin and the source of the live ammunition. The only way it can do that is by demonstrating that the live rounds were brought to the set by the movie's armorer, given the State's assertion that Baldwin should have been aware of her youth and inexperience and therefore the possibility that she brought live rounds to the set. Evidence that the live rounds came from Kenney is therefore favorable to Baldwin, which is why the State buried it. The State not only failed to disclose the evidence—it affirmatively hid it under a file number that is unaffiliated with the *Rust* case and then failed to disclose the only documentation that it claims to have created that would have alerted Baldwin to the existence of the evidence.

Simply put, the State was provided highly exculpatory evidence that supports Baldwin's argument of intervening cause; it also supports Baldwin's case that the SFSO's investigation was biased, improperly motivated, and incompetent, which the Court has already ruled is relevant and admissible. Yet the State concealed that evidence from Baldwin, and then it misrepresented the evidence that it had collected. This conduct is egregious and requires dismissal. *See State v. Davidson*, 2024 WL 2889839, at *1 (N.M. Ct. App. May 31, 2024) (“[T]he district court did not abuse its discretion in relying on its inherent authority to dismiss with prejudice as a sanction in response to the prosecution's repeated violation of the court's discovery orders . . . the prosecution's failure to disclose exculpatory information . . . and the prosecution's dishonesty in

an attempt to cover up this misconduct.”); *Giglio v. United States*, 405 U.S. 150, 154 (1972) (“whether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor”).

The State has “unilaterally withheld” evidence favorable to Baldwin’s defense, *State v. Harper*, 2011-NMSC-044, ¶ 17, 266 P.3d 25, including “evidence dealing with . . . credibility” that “could be expected to have a significant impact on the jury,” *Mathis*, 1991-NMSC-091, ¶ 14, while failing to provide any “reasonable explanation” for its nondisclosure, *id.*, ¶ 16. Even if the State’s failures have been unintentional (which is unlikely), they have been caused by the State’s own “intransigence” in refusing to facilitate Baldwin’s access to the discovery he is entitled to, *State v. Harper*, 2011-NMSC-044, ¶ 17, 266 P.3d 25, and are, “at a minimum,” sufficiently reckless to warrant dismissal, *Davidson*, 2024 WL 2889839, at *8. This information was required to be disclosed under *Brady*, *Giglio*, and Rule 5-501 NMRA. The State has repeatedly violated its obligations under these principles and rules.

In the alternative, Baldwin is also entitled to an adverse inference instruction that the State concealed this evidence because it knew it would be favorable to Baldwin’s defense. *Ulcenat v. United States*, 260 A.3d 684, 686 (D.C. 2021); *State v. Johnson*, No. A-1-CA-37850, 2020 WL 4731932, at *1 (N.M. Ct. App. Aug. 6, 2020). Under this remedy, the Court should instruct the jury that it must disregard Poppell’s testimony that the live rounds from the *Rust* set did not match the live rounds that Teske delivered to SFSO.

CONCLUSION

The Court should dismiss the case, with prejudice, or in the alternative issue an adverse inference instruction and inform the jury that it is striking Poppell’s testimony.

Date: July 11, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2024, a true and correct copy of the foregoing brief was emailed to opposing counsel.

/s/ Heather LeBlanc
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