

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

STATE OF NEW MEXICO,

Plaintiff,

No. D-101-CR-2024-0013

vs.

Judge Mary Marlowe Sommer

ALEXANDER RAE BALDWIN,

Defendant.

**STATE'S MOTION TO RECONSIDER DISMISSAL
WITH PREJUDICE**

COMES NOW the State of New Mexico by its Special Prosecutor, Kari T. Morrissey, who respectfully submits the Motion to Reconsider Dismissal with Prejudice and in support thereof the State submits the following:

INTRODUCTION

On July 12, 2024, the Court dismissed the above-captioned case with prejudice during trial for discovery violations, namely the State's failure to disclose ammunition collected by the Santa Fe County Sheriff's Department on March 6, 2024 from Troy Teske. The State asserts that there were insufficient facts to support the Court's ruling and there was no violation of the Defendant's due process rights. Specifically, the State asserts that, while the State may have suppressed the ammunition from Defendant Baldwin, the Defendant was aware of the existence of the ammunition and the specific characteristics of the ammunition prior to trial, the ammunition is not favorable to the defendant and is not material to his defense. Moreover, the State requests the Court order defense counsel to provide a description and all documents related to when and how they learned of the Teske ammunition so that the Court may properly consider prejudice to the

Defendant and a record for possible review by a higher court can be created. Finally, the State requests the Court reconsider the language in the Court's Order Granting Defendant Alec Baldwin's Expedited Motion for Dismissal and Sanctions Under *Brady*, *Giglio* and Rule 5-501 NMRA concerning the veracity of witness Marissa Poppell.

FACTS OF THE CASE

On October 21, 2021, Halyna Hutchins was shot and killed, and Joel Souza was shot but survived, during a rehearsal for a scene for the movie *Rust*. Ms. Hutchins and Mr. Souza were shot after Hannah Gutierrez loaded a live round into a real gun that was being used as a prop by actor Alec Baldwin.

Safety Protocols and Movie Set Ammunition

To fully understand the facts of the cases against Hannah Gutierrez, Alec Baldwin and David Halls (and the basis for the Court's order of dismissal with prejudice), one must understand the standard safety protocols for guns and ammunition on movie sets. Without this foundational knowledge the criminal prosecutions of Ms. Gutierrez, Mr. Baldwin and Mr. Halls may seem counterintuitive at first glance. First, real guns are routinely, but not always, used as props on movie sets with story lines that involve firearms. The film industry unions promulgate and publish written safety protocols for cast and crew for the use of real firearms and live and inert ammunition. *See* State's Exhibit 1.

The different types of ammunition commonly used on movie sets (especially western genre films) are blanks and dummies. Blank rounds are cartridges that contain a charged primer and gun powder (or some type of explosive material) but do not contain a projectile/bullet. These rounds are used to mimic real ammunition as they create a flash, a bang and smoke. Blank rounds come in several different load types depending on the level of bang, flash and

smoke that is desired for the scene. Blank rounds are dangerous even though they are missing the projectile and are well-known within the film industry to cause injury when shot too close to a person or if accompanied by a barrel obstruction. If there is a pebble or other obstruction in the barrel of the gun the explosive charge of the blank can shoot the obstruction out of the barrel just as it would the projectile of a live round. A blank round accompanied by a barrel obstruction is what caused the death of Brandon Lee on the set of *The Crow* in 1993.

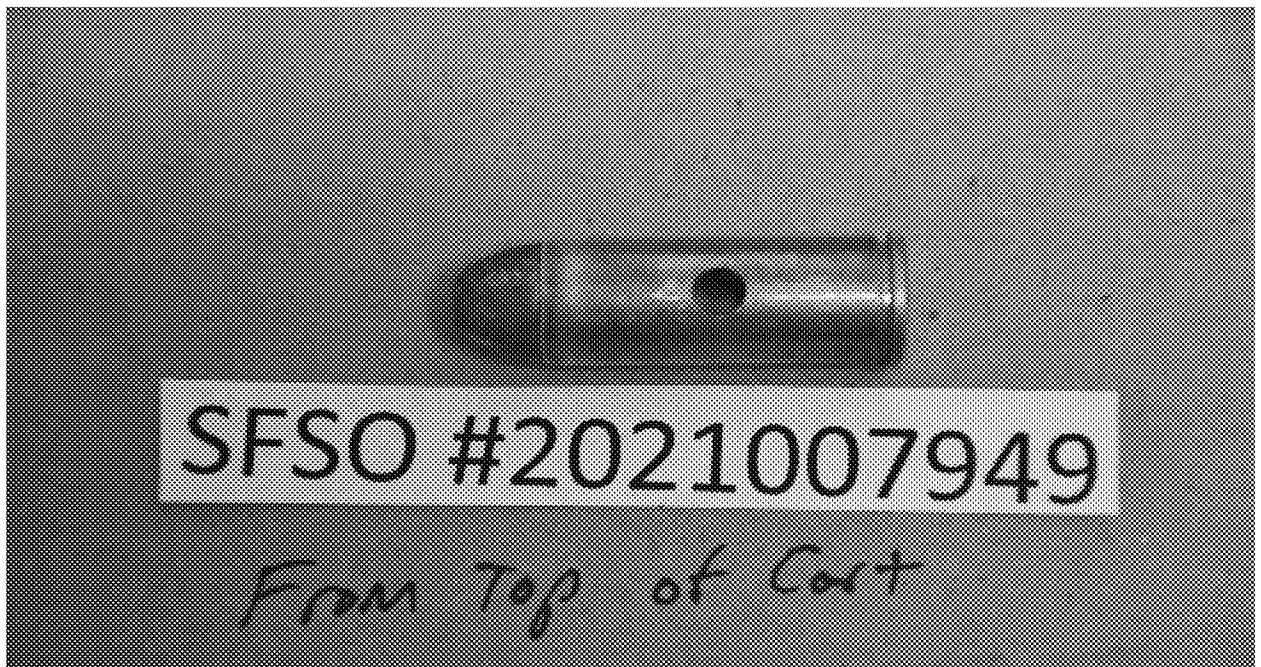
https://en.wikipedia.org/wiki/Brandon_Lee.



The photo above is an example of blank ammunition from the set of *Rust*.

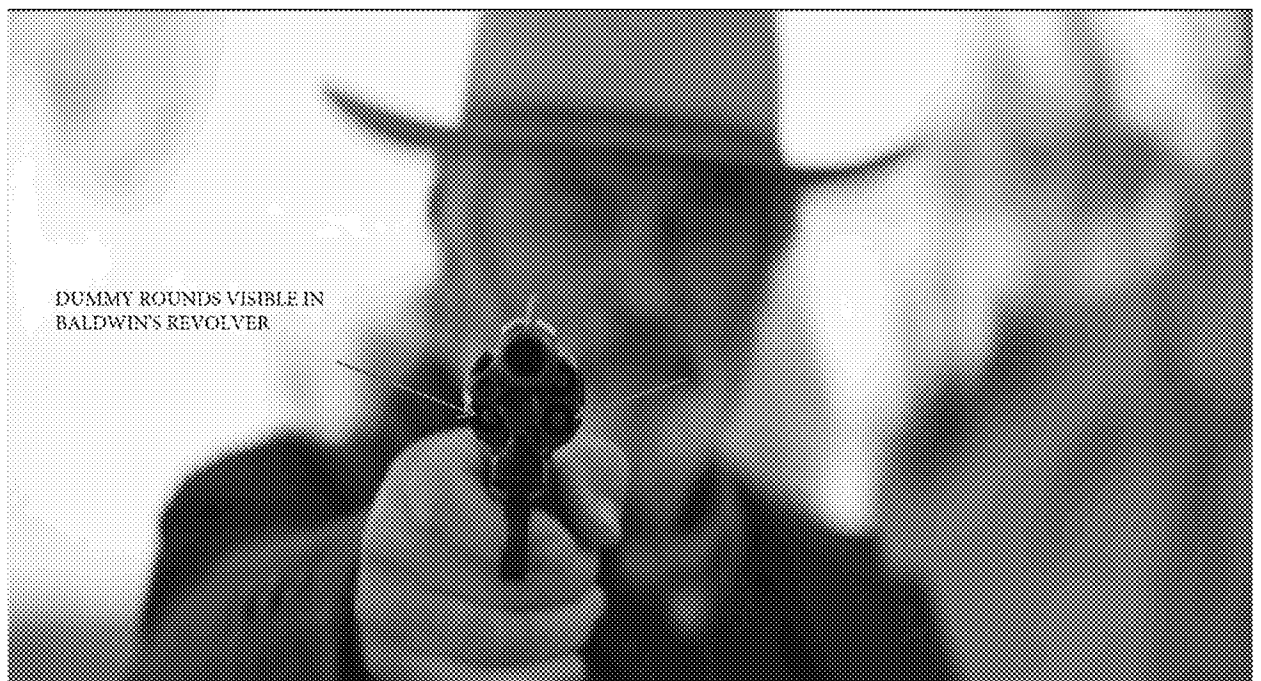
Dummy rounds are fake ammunition. Dummy rounds can have a variety of configurations and are designed to look exactly like real ammunition. Dummy rounds generally have a brass casing, may or may not have a primer (if the dummy round does have a primer, the primer is totally inert) and all have a projectile but no gun powder or explosive element. These rounds are costume rounds. They are made for appearance only and never go bang, flash or create smoke. They are designed to make the actor look like he/she is handling

real ammunition or has real ammunition loaded into his/her revolver. Because dummy rounds are made to look exactly like real ammunition, they are designed to be easily tested to ensure that they are inert. Dummy rounds typically have a hole in the side of the brass casing that demonstrates that there is no gun powder present inside or they have a BB inside the fully enclosed casing that rattles when shaken. The existence of the BB is demonstrative that there is no gun powder inside the casing.





The photos above are examples of dummy rounds from the set of *Rust*.



The above photo is of dummy rounds being used in Baldwin's gun.

The use of live ammunition on movie sets is discouraged and is regulated by the safety bulletins attached as State's Exhibit 2. Ideally live rounds should not be present on movie sets but are occasionally permitted as evidenced by the safety bulletin promulgated specifically for the use of live ammunition.

Roles of Pertinent Cast and Crew

Armorers within the film industry are responsible for ensuring that all guns and ammunition are safe and are being used safely by the actors and any other crew members on the movie set. This was the job of Ms. Gutierrez.

First Assistant Directors have many responsibilities on the set of a film but as it pertains to firearms and ammunition, the First Assistant Director is tasked with participating in a final safety check of the firearm and the ammunition immediately before the firearm is handed off to an actor to use in the filming of a scene. First Assistant Directors are also tasked with directing safety meetings with cast and crew so that all cast and crew are aware of what the upcoming scene(s) will entail in terms of any potential dangers and safety issues. This was the job of David Halls.

In addition to acting, actors on movie sets that involve real guns are responsible for the safe handling of the gun when the gun is in their possession. Actors are required to follow basic firearm safety rules as outlined in the published safety protocols attached hereto as State's Exhibit 1. The safety rules are simple 1) treat all firearms as if they are loaded/ready to use 2) do not play with or engage in horseplay with any firearms 3) never point a firearm at anyone 4) never place your finger on the trigger unless you are ready to shoot. Keep your finger alongside the firearm and off the trigger. Following these safety protocols was the responsibility of Alec Baldwin. Armorers are required to permit the actor to participate in the safety check of the

weapon and witness for themselves that the rounds placed into the gun are inert rounds or blank rounds, under the safety guidelines the actor is not required to participate. *See* State's Exhibit 1, paragraph 12, page 4 of 4. Mr. Baldwin declined to participate in the safety check with Ms. Gutierrez out of fear that he might insult her. *See* State's Exhibit 3 (Statement of Alec Baldwin on October 21, 2021) page 13 of 54.

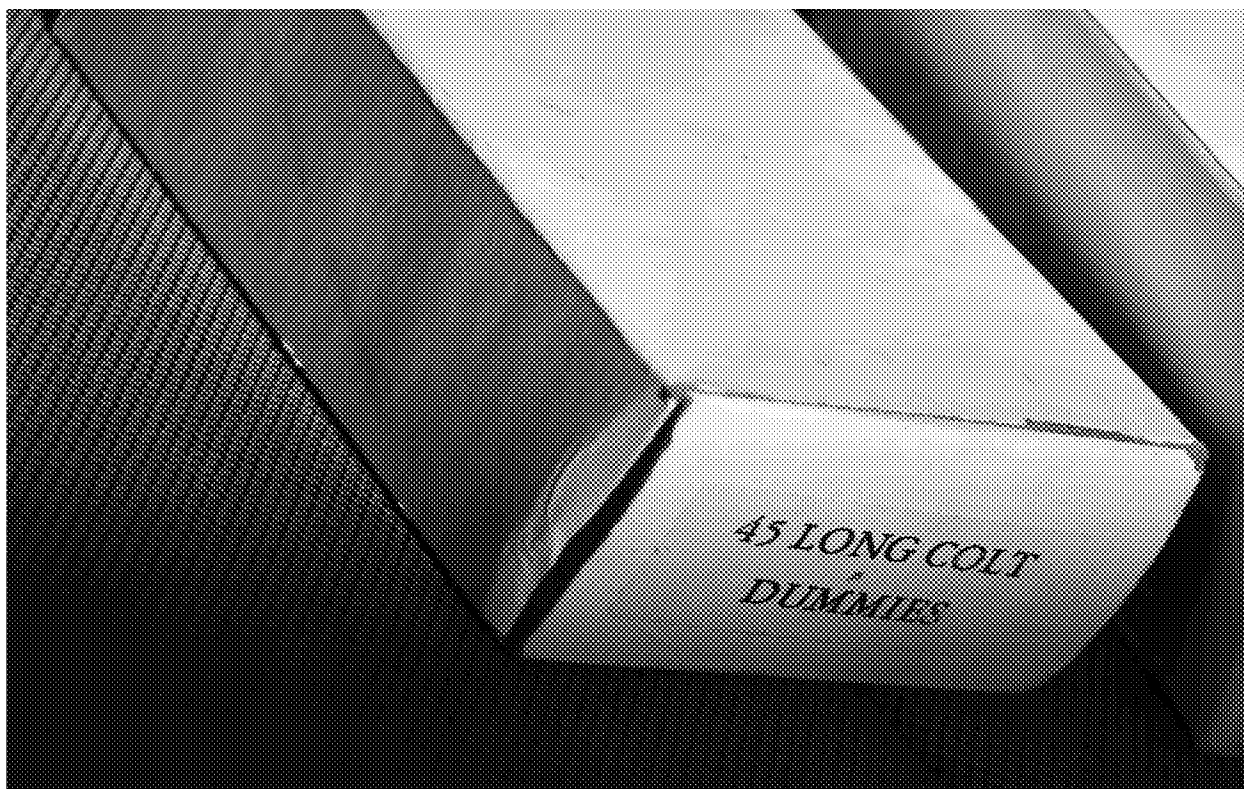
For Ms. Hutchins and Mr. Souza to have been shot, Ms. Gutierrez, Mr. Baldwin and Mr. Halls *all* had to fail in performing their duties and meeting their responsibilities. It would be for the jury to decide whether the failure of the defendants reached the level of recklessness required by the elements instructions. Ms. Gutierrez failed by bringing live rounds onto the movie set and loading a live round into Mr. Baldwin's gun. Mr. Halls failed by not participating in an adequate safety check ensuring that all rounds placed in the gun by Ms. Gutierrez were inert and he falsely notified the cast and crew that the gun was "cold" meaning it was inert and safe to handle. Mr. Baldwin failed by ignoring the enumerated safety protocols 1, 3, and 4 described above. There is video evidence of Mr. Baldwin ignoring these safety protocols on numerous other occasions during the filming of the movie and engaging in horseplay with his firearm on several occasions.

Four other important people in the case are Sarah Zachry, Seth Kenney, Thell Reed and Troy Teske. Sarah Zachry was the prop master on the set. Ms. Zachry was responsible for obtaining and setting up all of the props used in the movie (cups, dishes, knives, leather belts, etc.). Ms. Zachry was assisted by Ms. Gutierrez and Nicole Montoya. Seth Kenney was the supplier of guns and some of the ammunition used on the set. Mr. Kenney supplied all of the guns, blank ammunition, and one box of .45 caliber dummy rounds that were visibly dissimilar to the two boxes of dummy rounds supplied by Ms. Gutierrez herself. Mr. Kenney also obtained boxes of dummy rounds from an outside supplier that were not .45 caliber. Only .45 caliber

rounds are material to the cases against the defendants as Mr. Baldwin's prop gun only held .45 caliber rounds. Thell Reed is the stepfather of Ms. Gutierrez and has been a longtime Hollywood armorer and gun coach. Mr. Reed is now well into his eighties and has resided in Bullhead City, AZ for many years. According to Ms. Gutierrez and Mr. Reed, Mr. Reed trained Ms. Gutierrez how to be a movie set armorer. It is worth noting that Ms. Gutierrez acted as an assistant to Mr. Reed on only one movie in 2016. See State's Exhibit 4 (Statement of Hannah Gutierrez, November 9, 2021) page 8. Troy Teske is a former police officer with the Bullhead City Police Department in Bullhead City, AZ and a close friend of Thell Reed. Mr. Teske stores guns and ammunition for Mr. Reed. See State's Exhibit 5 (transcript of the pretrial interview of Troy Teske), pages 2, 3, 11-12.

Introduction of the Live Ammunition to *Rust*

How do we know that Ms. Gutierrez brought the live rounds onto the set and loaded the live round into the gun? The supportive evidence is Ms. Gutierrez own statements and the testimony of other witnesses. Ms. Gutierrez admitted loading the gun right before it was handed to Mr. Halls and subsequently passed on to Mr. Baldwin. See State's Exhibit 4, pages 104-105. Moreover, Ms. Gutierrez admitted to bringing two boxes of purported dummy rounds onto the set from the previous movie she worked on in August 2021. *Id* at page 29. On October 21, 2021, when police arrived at Bonanza Creek Ranch Ms. Gutierrez identified the box of supposed dummy rounds she was using to load Mr. Baldwin's gun. The box had a unique label and was found to have one live round inside of it and two live rounds sitting next to it on top of a utility cart used by Ms. Gutierrez to store guns and ammunition during filming.



Box identified on the set of *Rust* by Ms. Gutierrez as the box she was using to load Baldwin's gun on October 21, 2021.

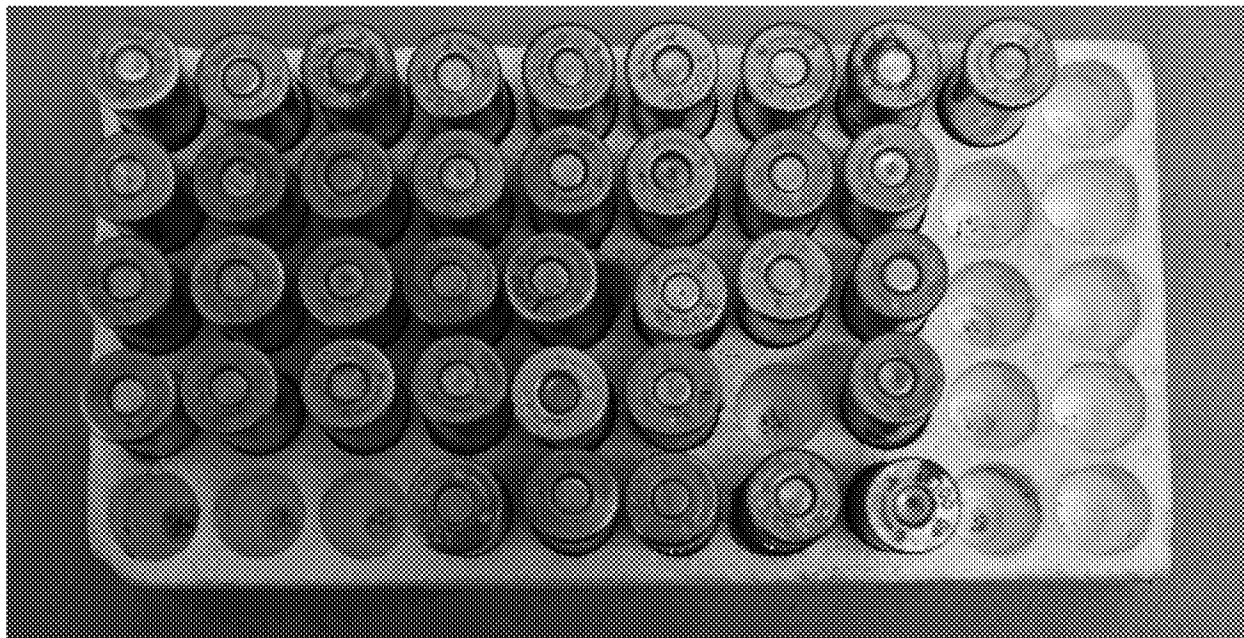


Photo of the contents of the box in the top photo. The cartridge with the silver primer was found to be a live round.



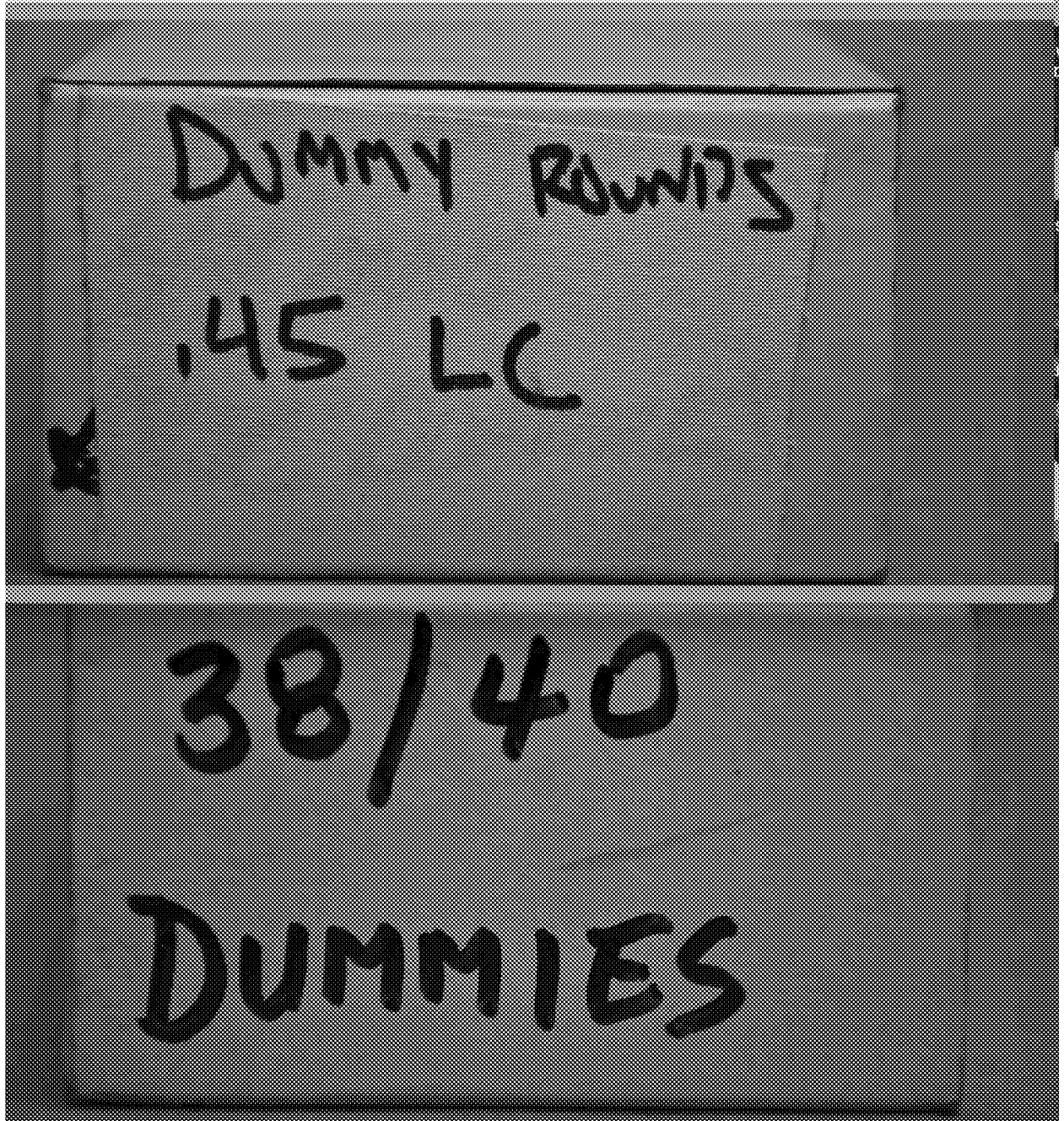
Two live rounds located on the top of the utility cart.

When Ms. Gutierrez was later interviewed by detectives, she showed the detectives a photo of a box of dummy rounds that she obtained from her father so that detectives could see the type of box she brought to the set, and it was identical to the box she identified as the box of dummy rounds she was using to load Mr. Baldwin's gun that contained a live round.

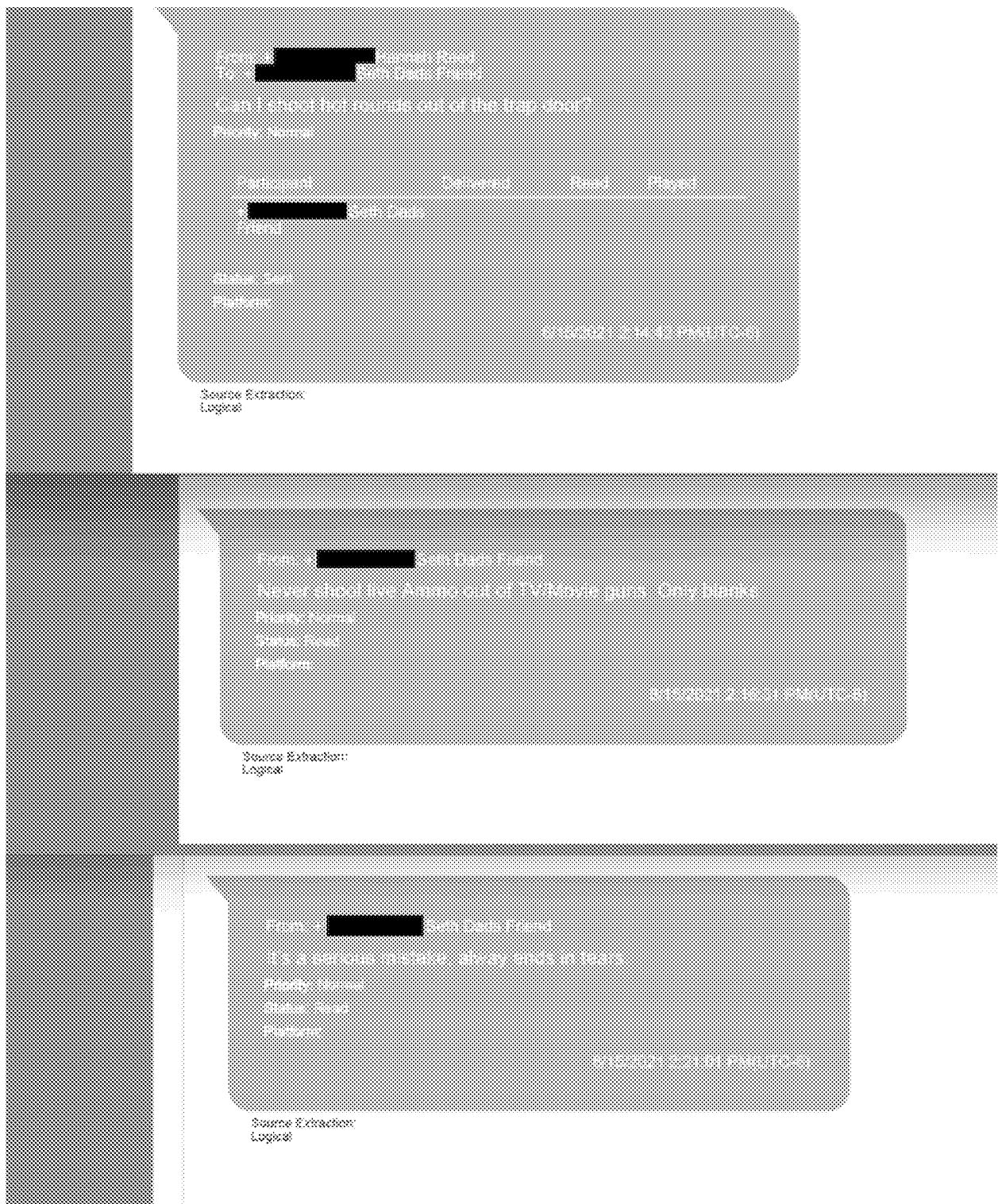


Photo of dummies provided by Thell Reed to Hannah Gutierrez as discussed in the November 9, 2021 interview.

These boxes were dissimilar to the other boxes of dummy rounds provided by Seth Kenney and his suppliers (see photos below)



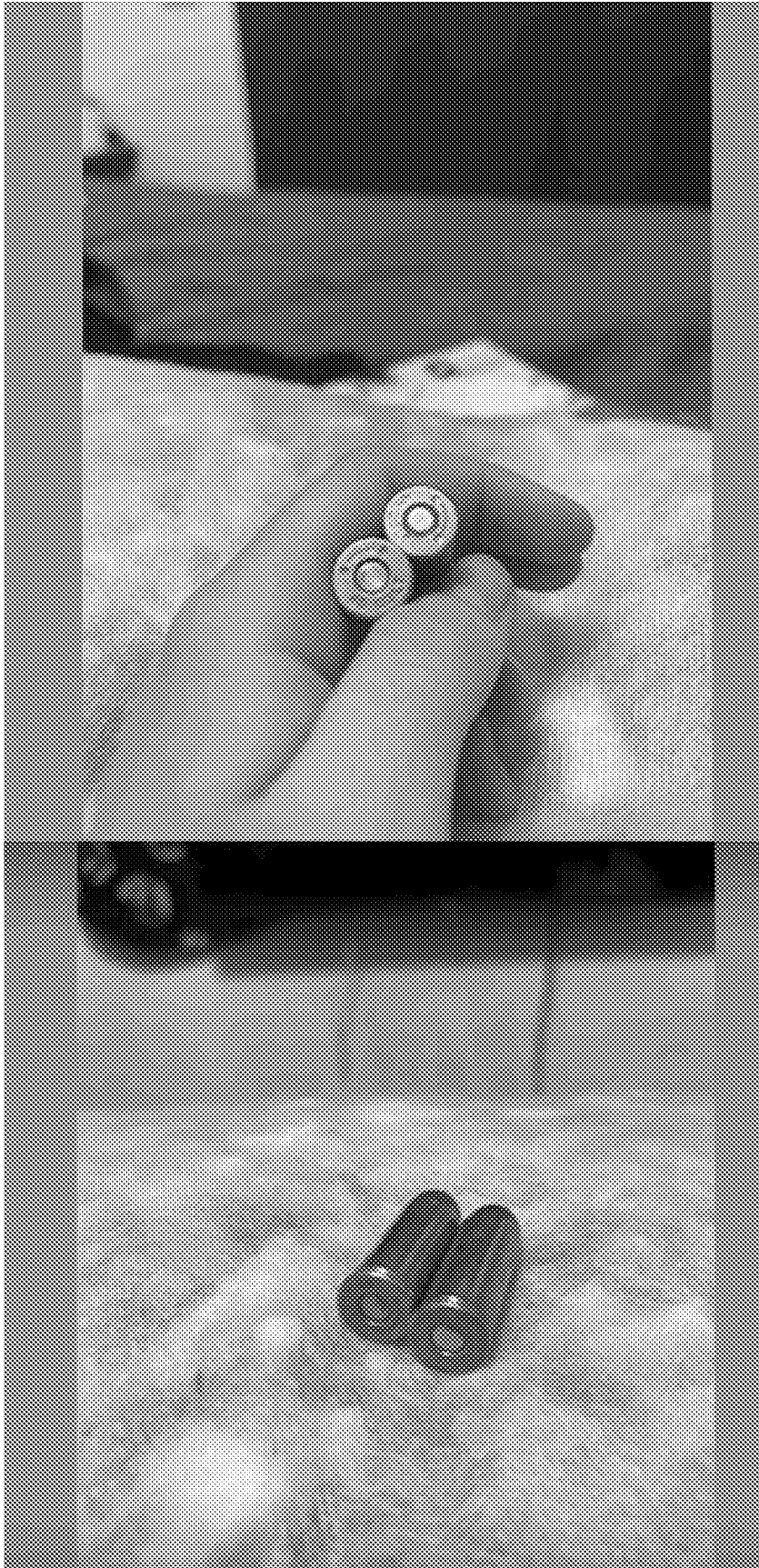
Additional circumstantial evidence that Ms. Gutierrez introduced the live rounds to the set of *Rust* is that Ms. Gutierrez requested to shoot live ammunition out of the real prop guns on her previous film, *The Old Way*.



Moreover, prior to beginning work on the set of *Rust*, Ms. Gutierrez told Mr. Kenney that she had obtained live ammunition and there is a text exchange between Ms. Gutierrez and her

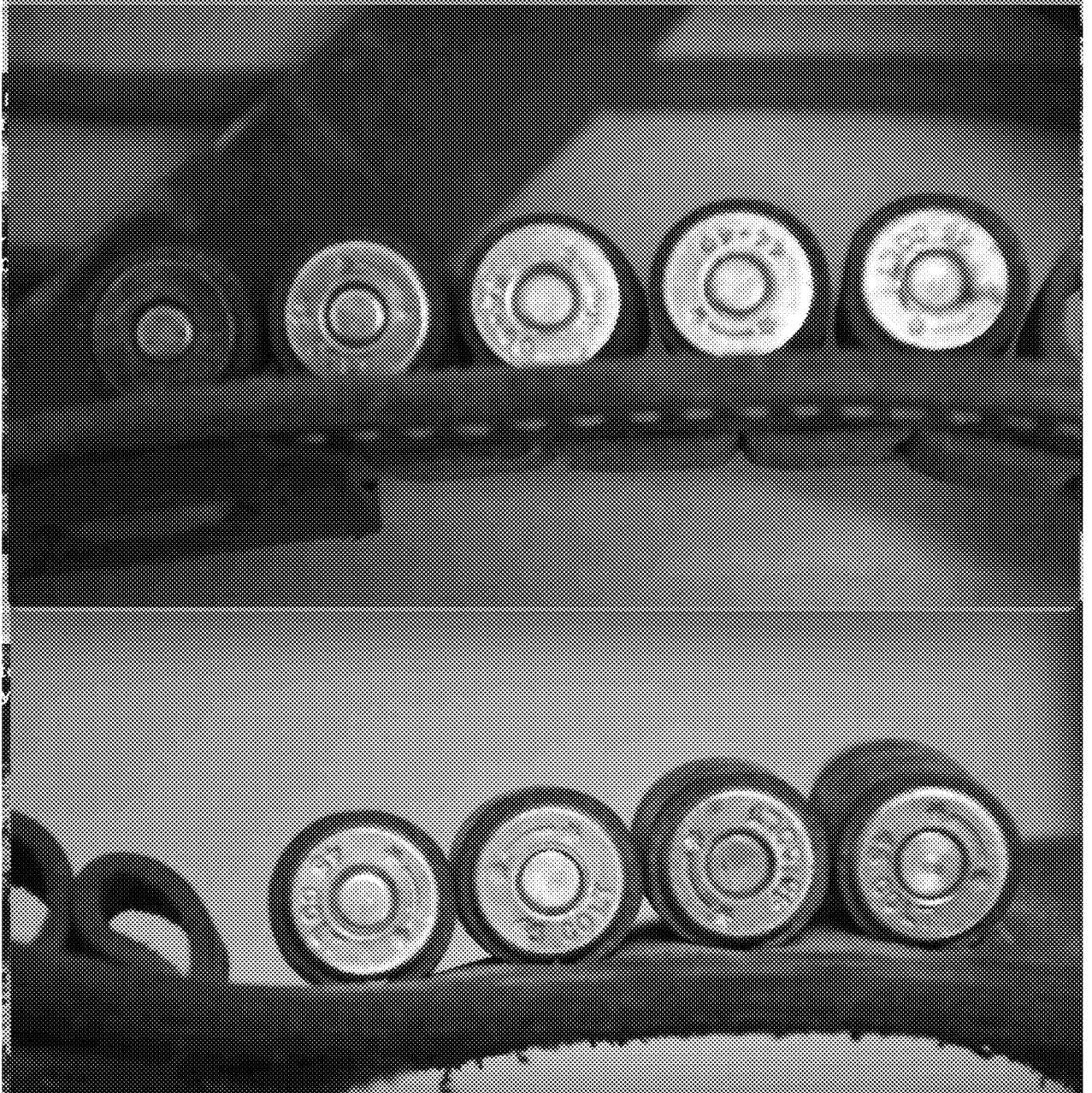
stepfather, Thell Reed, that supports the notion that she was actively trying to obtain live .45 caliber ammunition. *See* State's Exhibits 6 and 7. Finally, it was discovered that Ms. Gutierrez submitted an invoice to Rust Productions, LLC for a device called an inertia puller (also referred to as a bullet puller). *See* State's Exhibit 8. An inertia puller is designed for one purpose, the disassembling of live ammunition. In November 2021 Ms. Gutierrez took two photos of ammunition referred to in later text messages as being live ammunition and the ammunition depicted in the photos appears to be a match for the live rounds found on the set of *Rust*.

Photos below taken by Hannah Gutierrez's phone in November 2021 appear to depict rounds that look identical to the live rounds found on the set of *Rust*.



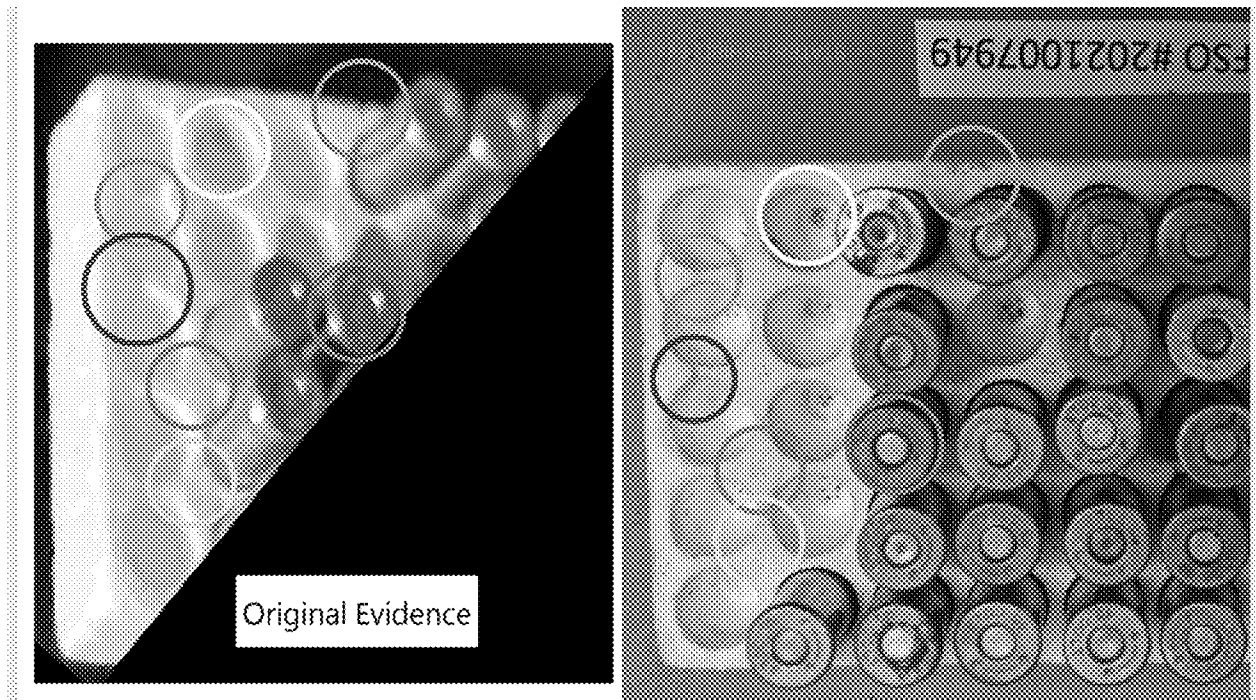
There is absolutely no evidence that the live ammunition was planted on the set of *Rust* by a saboteur or provided by Mr. Kenney or Ms. Zachry. All suggestions that the live ammunition was planted by a saboteur or provided by anyone other than Ms. Gutierrez is rank speculation.

Ultimately there were six live rounds located on the set of *Rust* in various locations. One live round was placed in the gun that killed Ms. Hutchins and injured Mr. Souza. One live round was found in Mr. Baldwin's gun holster and one live round was found in actor Jensen Ackles' gun holster. The holsters were designed with leather loops intended for the storage of extra ammunition. See photo below.



As mentioned above, one live round was located in the box of supposed dummy rounds being used by Ms. Gutierrez to load Mr. Baldwin's gun and two live rounds were located next to the box of dummy rounds on the utility cart used to store guns and ammunition. The State demonstrated in painstaking detail during the trial of Ms. Gutierrez that the live rounds were present on the set long before October 21, 2021 and as early as October 10, 2021. The photo on October 10, 2021 shows a .45 caliber round with a silver primer in the same box of ammunition

that Ms. Gutierrez was pulling rounds from when she loaded Alec Baldwin's gun on October 21, 2021 and the round with the silver primer was in the exact position on October 10, 2021 where it was ultimately found by law enforcement on October 21, 2021 and identified as a live round. This is the same box that Ms. Gutierrez identified through photos as being introduced to the set by Ms. Gutierrez.



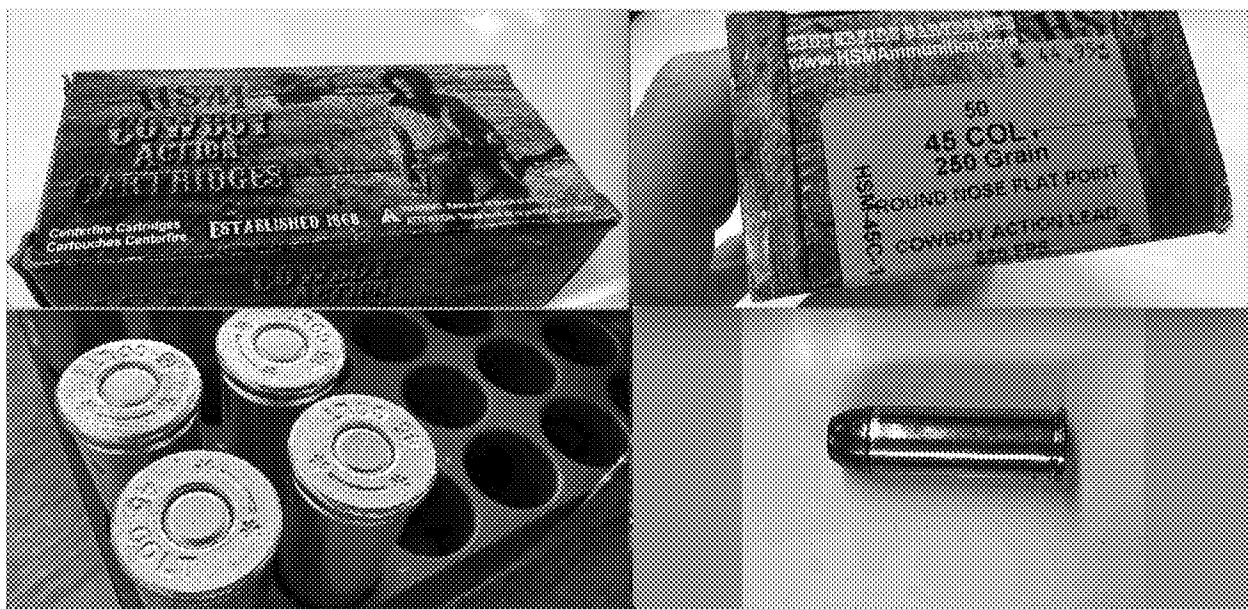
The photo on the left was taken on the set of *Rust* on October 10, 2021 and the photo on the right was taken of the box of dummy rounds Ms. Gutierrez was using to load Baldwin's gun. The round circled in red appears to have a silver primer on October 10, 2021 and is depicted in the same Styrofoam insert on October 21, 2021.

The live rounds found on the set of *Rust* have numerous specific characteristics. All of the live rounds have Starline Brass casings, silver primers and identically shaped projectiles with a six-millimeter meplate (the meplate is the tip of the nose of the bullet/projectile).



Live rounds from the set of *Rust*.

It is worth noting that Starline Brass only manufactures brass casings, Starline Brass does not manufacture actual ammunition. While the live rounds from the set of *Rust* have these specific characteristics, so do many other (likely millions) live rounds that can be purchased at gun stores around the world. As a test, undersigned counsel asked her ballistics expert, Michael Haag, to see if he could purchase rounds with all of these same characteristics from a local gun store. Mr. Haag was easily able to locate and purchase a box of .45 caliber ammunition with these characteristics from a local gun store in Rio Rancho, NM. See photos below.



The single box of dummy rounds provided by Mr. Kenney were distinctive in their appearance as the brass casings were heavily antiqued giving them a dark bronze color and not a shiny brass color. The dummy rounds provided by Mr. Kenney also had Starline Brass casings and silver primers, but most had projectiles with four-millimeter meplates.



None of the other dummy rounds located on the set had silver primers. In sum, all rounds located on the set with silver primers were either dummy rounds provided by Seth Kenney or live rounds. The two can easily be distinguished by the dark bronze color of the dummy rounds provided by Seth Kenney and the Kenney dummy rounds had a BB inside and rattled when they were shaken.

Immediately after the death of Ms. Hutchins, Jason Bowles, counsel for Ms. Gutierrez, and Alec Baldwin began blaming Mr. Kenney for introducing the live rounds to the movie set. Mr. Baldwin made statements to the media that cast suspicion on Mr. Kenney. Mr. Bowles immediately began speaking to the lead detective with the Santa Fe County Sheriff's Department, Alexandria Hancock, and telling her his theory that Mr. Kenney introduced the live rounds to the set of *Rust* through his dummy rounds or through Sarah Zachry in an attempt to have Ms. Gutierrez terminated from her position as armorer. Mr. Bowles told Detective (now Corporal) Hancock that Mr. Kenney was in possession of live .45 caliber ammunition that was provided to him by Ms. Gutierrez's father, Thell Reed. In undersigned counsel's opinion, Mr. Bowles provided this information to Corporal Hancock for two reasons. First, demonstrating that the live rounds were introduced to the set of *Rust* by someone other than his client benefited his client by deflecting blame away from her. Second, it was true that Mr. Kenney was provided live .45 caliber ammunition by Thell Reed approximately two and a half months before Ms. Hutchins death and Mr. Kenney did supply one box of dummy ammunition to the set of *Rust* so he was a potential source of the live ammunition. Investigating whether the live rounds were introduced by Mr. Kenney was an appropriate avenue of investigation by law enforcement and the prosecution. This was an appropriate avenue not because it was particularly germane to the issues in Mr. Baldwin's case, but because it was relevant to whether Ms. Gutierrez' negligence contributed to the introduction of the live rounds to the set of *Rust* in addition to her clear negligence/recklessness of loading a live round into a real prop gun for use in a rehearsal by an actor. The source of the live rounds was also important to the victims and their surviving family members who wanted to know all the circumstances surrounding the tragedy. It should be noted that Mr. Kenney never denied possessing live .45 caliber ammunition and turned over a sampling

of six rounds of the ammunition in his possession to the sheriff's department on November 19, 2023.

Appropriately, Corporal Hancock received the information from Mr. Bowles and ultimately executed a search warrant on Mr. Kenney's business in Albuquerque, NM, PDQ Props despite his willingness to cooperate and surrendering of a sampling of live rounds. The search warrant was not executed until November 30, 2023 primarily because there was a steep learning curve for law enforcement to climb having never worked on or studied any of the issues related to the use of real guns and the types of ammunition used on movie sets. When the sheriff's department executed the search warrant on PDQ Props they found 74 rounds of live .45 caliber ammunition in Mr. Kenney's possession that he had previously acknowledged possession of when speaking to law enforcement. All of the live .45 caliber ammunition taken from PDQ Props was visibly dissimilar to the live rounds located on the set of *Rust*.

See photo below of live rounds from Seth Kenney/PDQ.



Despite the fact that the live ammunition from PDQ was obviously dissimilar to the live ammunition taken from the set of *Rust*, law enforcement sent the live ammunition from *Rust* and PDQ to the FBI for comparative forensic testing. The FBI determined that the gun powder inside the live rounds taken from PDQ was vastly dissimilar to the gun powder in the live rounds from *Rust*. In sum, the ammunition was different on the outside and on the inside. There was substantial evidence that Ms. Gutierrez brought the live ammunition to the set of *Rust* in the box of supposed dummy ammunition provided to her by her father. There was zero evidence that Mr. Kenney was ever in possession of .45 caliber live ammunition with the same specific characteristics as the live rounds located on the set of *Rust* and this fact has not changed.

Source of the PDQ Live Ammunition

In August 2021 Thell Reed and Seth Kenney were asked by the producers of the television series *1883* to conduct a firearms training with the actors working on *1883* at a private

shooting range in Texas that was located near the set of *1883*. In August 2021 Mr. Reed and Ms. Gutierrez drove to from Bullhead City, AZ to Albuquerque, NM to meet with Mr. Kenney. Mr. Reed brought with him 325 rounds of live .45 caliber ammunition to use at the *1883* firearms training. Mr. Kenney, Mr. Reed and Ms. Gutierrez met in Albuquerque, NM where they gathered their equipment before they ultimately split up. Mr. Kenney and Mr. Reed drove to Texas for the *1883* training and Ms. Gutierrez drove to Montana to begin her first job as armorer on the set of *The Old Way*. Mr. Kenney and Mr. Reed took all 325 live rounds to Texas to train the *1883* actors on gun techniques with live ammunition. At the conclusion of the *1883* training there were 80 live rounds leftover, and those rounds were ultimately driven from Texas back to Albuquerque, NM by Seth Kenney and stored at PDQ Props until they were seized by the sheriff's department on November 30, 2023. As mentioned above, the live ammunition taken from PDQ Props and surrendered previously by Kenney was visibly and chemically dissimilar to the live ammunition found on the set of *Rust* and consisted of rounds with brass casings from the following manufacturers, Starline Brass, S & B, BHA, R • P and AP. Of the 80 rounds only one had a silver primer and it was housed in an AP brass casing, not a Starline Brass casing. Nearly all of the live rounds taken from PDQ have projectile shapes called semi-wadcutter and the semi-wadcutter projectile is dissimilar to the projectiles from the live rounds from the set of *Rust*. None of the live rounds taken from PDQ were a *match* for the live rounds taken from the set of *Rust*. It is worth noting that Mr. Reed was interviewed telephonically by law enforcement and agreed that the live ammunition taken to Texas had semi-wadcutter projectiles.

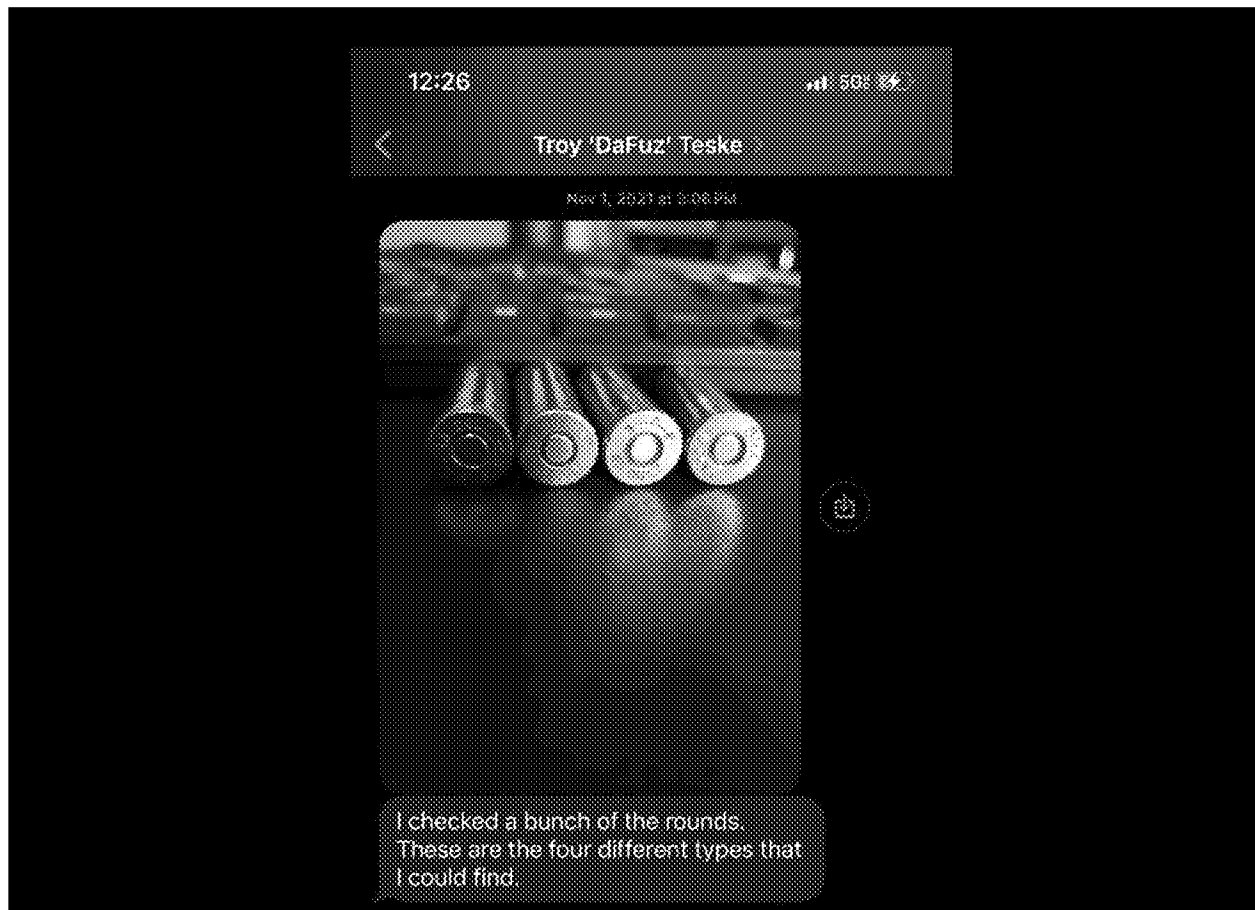
. Semi-wadcutter bullet:



The above photo is a stock photo of a semi-wadcutter projectile found online.

In addition to being a colleague of Mr. Reed's in the film industry, Mr. Kenney was also a friend of Mr. Reed and Mr. Teske. Mr. Kenney knew that Mr. Teske stored Mr. Reed's guns and ammunition for him because Mr. Reed did not have a secure storage facility available to him. In the beginning of November 2021 Mr. Kenney contacted Mr. Teske and asked about any leftover .45 caliber live ammunition belonging to Mr. Reed that was not brought to Albuquerque and ultimately taken to Texas for the 1883 training. Mr. Kenney was also trying to determine where the live rounds found on the set of *Rust* came from. Mr. Teske responded with a photo of

four different types of .45 caliber ammunition that belonged to Mr. Reed and was purportedly left in Arizona and not transported to New Mexico and Texas in August 2021.



During this text exchange Mr. Teske was asked by Mr. Kenney if any of the remaining rounds belonging to Mr. Reed had nickel (silver in color) primers and Mr. Teske responded, “No”.

12:26

5G% 



Troy 'DaFuz' Teske >

I checked a bunch of the rounds.
These are the four different types that
I could find.

Yep, it's evidence in the accidental
death

Okay

Ugh, this sucks but she's seriously
trying to blame everyone else for her
mistake

Who is she? Hannah?

Hannah

Nov 3, 2021 at 11:44 AM

Did you see any rounds in either box
with nickel primers?

No



Read

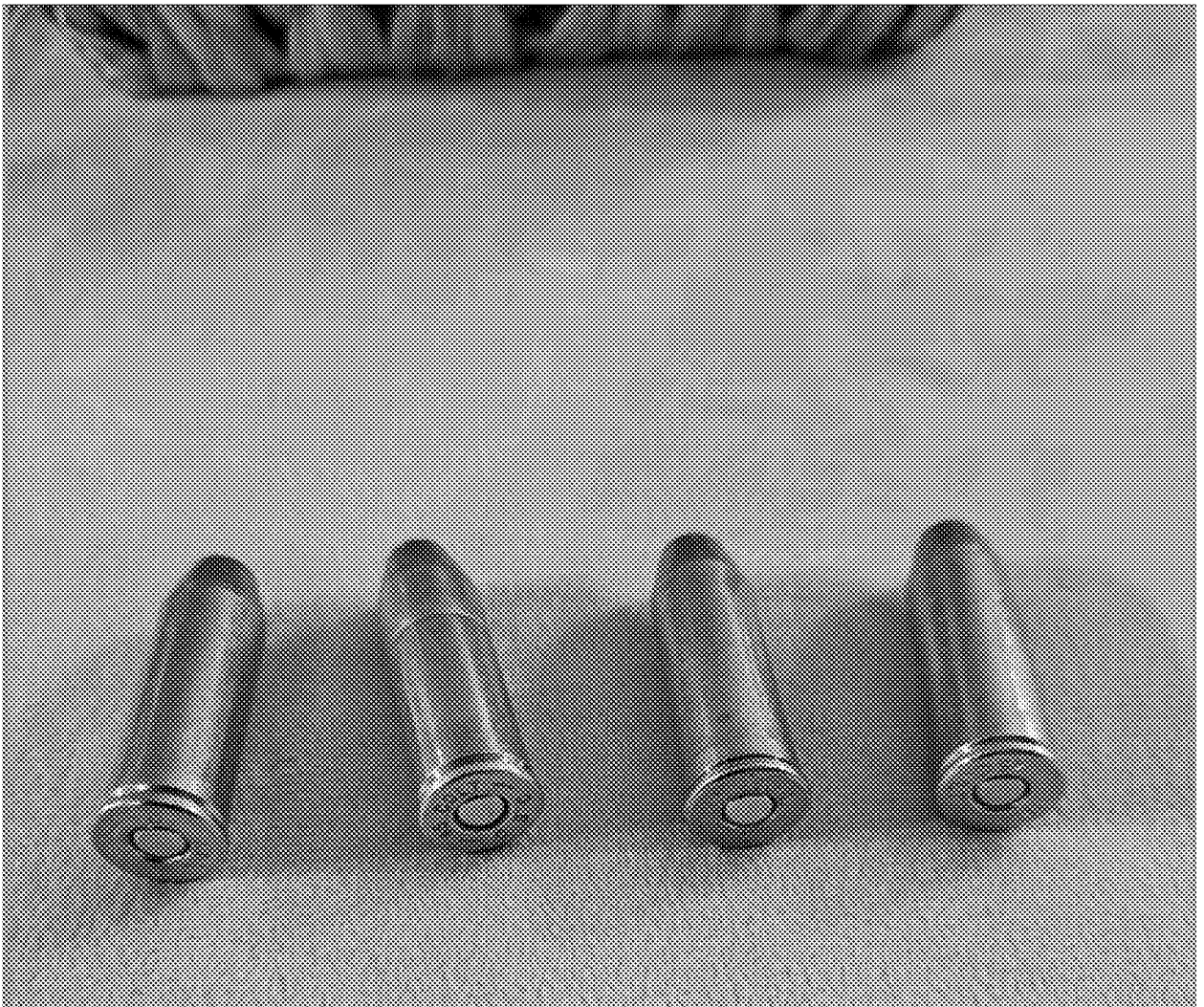
Mr. Teske's statement at the time was evidence that Mr. Reed was not in possession of live rounds similar to the rounds from the set of *Rust*.

During the initial law enforcement investigation into the death of Ms. Hutchins, Mr. Bowles asked Corporal Hancock to collect the remaining .45 caliber live rounds in Teske's possession and send them to the FBI for testing. Corporal Hancock decided not to collect the rounds for testing because the photos and text messages from Teske to Kenney demonstrated that the rounds in Teske's possession had no relevance to the cases against Ms. Gutierrez, Mr. Baldwin or Mr. Halls and Corporal Hancock was unclear how to collect the rounds given that the Santa Fe County Sheriff's Department had no jurisdiction in Arizona. Hancock would have had to enlist the assistance of a local law enforcement agency in Arizona to collect ammunition that seemingly had no relevancy to the cases. Of the rounds belonging to Thell Reed that remained in Arizona, none of them were ever seen or possessed by Seth Kenney. *See State's Exhibit 9.*

In November 2023 undersigned counsel conducted a pretrial interview with Troy Teske as he was listed as a defense witness for Ms. Gutierrez. During the interview Mr. Teske was flippant about any possible relevancy of the remaining .45 caliber ammunition in his possession. He stated that he and Mr. Reed had gone shooting since the incident resulting in Ms. Hutchins' death and had "already shot most of it up, if not all of it." *See State's Exhibit 5, page 18.*

In January 2024 Mr. Bowles asked undersigned counsel if she would have the ammunition in Mr. Teske's possession collected by law enforcement and tested by the FBI. Mr. Bowles sent a photo of the ammunition in Mr. Teske's possession to undersigned counsel and the photo matched the photo sent by Mr. Teske to Mr. Kenney in November 2021. The photo

contained four rounds of ammunition, and all were visibly dissimilar to the live ammunition found on the set of *Rust*.



Both photos, the one provided by Teske to Kenney in November 2021 and the one provided by Teske to Bowles and then to undersigned counsel in January 2024 contained one cartridge with a Starline Brass casing, brass primer and a projectile shape dissimilar to the live rounds from the set of *Rust*, one cartridge with a brass CBC casing, brass primer and a projectile shape dissimilar to the live rounds from the set of *Rust*, one cartridge with a brass Winchester casing, brass primer and a projectile shape dissimilar to the live rounds from the set of *Rust* and

one cartridge with a brass BHA casing, brass primer and a projectile shape dissimilar to the live rounds from the set of *Rust*.

There is no evidence that that any live rounds with Starline Brass casings, silver primers and similarly shaped projectiles were ever taken to Texas for the 1883 training or were ever in the possession of Seth Kenney. It is apparent from the previous statements of Mr. Reed and Mr. Teske that Mr. Reed owned numerous rounds of .45 caliber live ammunition that was comprised of a variety of different brass casings, primer colors and projectile shapes. The State concedes that some of these rounds were taken to Texas for the 1883 training. However, there is absolutely no evidence beyond pure speculation that live ammunition with the same characteristics of the live ammunition from the set of *Rust* ever went to Texas for the 1883 training or was left over from the training and was taken back to PDQ.

The fact that Mr. Teske turned over live rounds with the same characteristics as the live rounds found on the set of *Rust* that can be purchased at any gun store two and half years after Ms. Hutchins death is immaterial to the case against Mr. Baldwin. This is especially true when you consider that on two occasions Mr. Teske provided photos of the different types of .45 caliber ammunition in his possession and none of them appeared similar to the live rounds from the set of *Rust* and Mr. Teske specifically stated that none of the remaining rounds belonging to Mr. Reed in his possession had silver primers. Regardless, Mr. Baldwin still handled his gun recklessly in violation of his own union's safety bulletins and New Mexico law.

State v. Hannah Gutierrez Trial

The trial of Hannah Gutierrez began in late February 2024 and ended on March 6, 2024. During the trial undersigned counsel was notified by Mr. Bowles that he would not be calling Thell Reed or Troy Teske to testify on Ms. Gutierrez' behalf, although both were present in the

courtroom during the trial. On March 6, 2024, after the trial concluded, Mr. Teske went to the Santa Fe County Sheriff's Department and turned over several rounds of purported live .45 caliber ammunition to crime scene technician, Marissa Poppell. A six-minute lapel video of the exchange was recorded by Lieutenant Brian Brandle. During this exchange Mr. Teske explained that he was asked to be a witness for the defense by Mr. Bowles and was asked to bring certain pieces of ammunition with him from Arizona to the trial in New Mexico. Mr. Teske explained that when he arrived in Santa Fe, NM for the trial he was told that he would no longer be called as a witness and Mr. Bowles no longer wanted the ammunition he was asked to bring. After Bowles refused to take the ammunition, Mr. Teske decided to drop the ammunition off at the sheriff's department. Mr. Teske explained that the ammunition was not from the set of *Rust* but was from the same *batch* of ammunition that Mr. Reed took to New Mexico and Texas for the *1883* training. Mr. Teske left 23 rounds of ammunition with CST Poppell. Three of the rounds had the same characteristics as the live rounds collected from the set of *Rust* - Starline Brass casings, silver primers and projectiles with a six-millimeter meplate. Corporal Hancock attempted to contact Mr. Teske to interview him about the ammunition to determine whether any of it had any relevance at all to the criminal investigation and Mr. Teske was non-responsive. *See State's Exhibit 10.* The fact that Mr. Teske turned over three rounds that look like the live rounds found on the set of *Rust* is evidence that Mr. Teske and Mr. Reed were in possession of rounds that appear the same as the live rounds from the set of *Rust* – this is not relevant or material evidence in the case against Mr. Baldwin, nor is it material to his defense. It is simply further evidence of how Ms. Gutierrez may have obtained the live rounds that she ultimately introduced to the set or *Rust*.

There is absolutely no evidence that the rounds dropped off by Mr. Teske were ever in the possession of Seth Kenney or Sarah Zachry, seen by Seth Kenney or Sarah Zachry or known about by Seth Kenney or Sarah Zachry. There is no evidence that any of the rounds left the State of Arizona until brought to New Mexico by Mr. Teske at the request of Mr. Bowles in March 2024. The rounds are not evidence of sabotage and do not serve to impeach anyone who is a witness in this case other than impeaching the testimony of CST Poppell when she mistakenly testified upon questioning by undersigned counsel that none of the rounds collected by Mr. Teske were similar to the live rounds found on the set of *Rust*. There is substantial evidence that Hannah Gutierrez was in possession of strikingly similar live rounds on the set of *Rust* from at least October 10, 2021 to October 21, 2021 and again in November 2021.

Source of the Live Rounds as it relates to State v. Baldwin

Mr. Baldwin was indicted by a grand jury on the charge of involuntary manslaughter for negligent use of a firearm and involuntary manslaughter under an alternative theory. The alternative theory was acting without due caution and circumspection by discharging a firearm during the production of a movie without first verifying the firearm contained no live ammunition and while the firearm was pointed in the direction of another, and he should have known of the danger involved and acted with willful disregard for the safety of others. *See* State's Exhibit 11.

Nothing about the details of how the live rounds were introduced to the set is relevant or material to the charges against Mr. Baldwin. It is not a criminal act in any way to bring live ammunition onto a movie set (unless it is done negligently by the set's own armorer as evidence of her ongoing negligent and reckless conduct that ultimately culminated in her loading a live round into the prop gun that killed someone). Even though there is not a single shred of

evidence that the live rounds were planted on the set of *Rust* by a saboteur, let's assume for the sake of argument that they were. If we assume that a saboteur planted the live rounds on the set of *Rust* it was still very much Hannah Gutierrez's job to ensure that they never made it into a real firearm. Likewise, it was still Alec Baldwin's responsibility to handle his real prop gun safely and not point the gun at anyone (let alone two people at the same time), cock the gun when the scene did not call for it and pull the trigger of the gun when the scene did not call for him to pull the trigger. *See* State's Exhibit 12 (relevant portions highlighted).

It is important to view the facts of the case as a whole – the live round in Mr. Baldwin's holster can be seen in video evidence as early as October 13, 2021, and the live round in the box of Ms. Gutierrez's dummy ammunition can be seen as early as October 10, 2021. If there was a saboteur, the saboteur had to have planted the live rounds long before October 21, 2021, leaving more than enough time for Ms. Gutierrez to locate and isolate them. All Ms. Gutierrez had to do was ensure that each dummy round rattled or had a hole in the side of the brass – it's that simple and it was her primary job. Assuming there was evidence that a saboteur planted the live rounds on set (and there is none) this is entirely irrelevant to the issue of proximate cause as set forth in 14-251 and 14-252 as discussed in more detail below.

Let's also assume for the sake of argument that the three live rounds collected from Teske on March 6, 2024 that possessed the same physical characteristics as the live rounds found on *Rust* were sent to the FBI for explosives/gun powder testing. The testing of the explosive powder inside the cartridge could only result in the FBI giving an opinion that the powder from the live rounds found on the set of *Rust* was *consistent* with the powder from the live rounds turned over by Teske. The FBI cannot and will not say that they are the *same*. *See* State's Exhibit 13 (previous trial testimony of Robert Gillette - relevant portion highlighted). There are

several different types of gun powder used all over the world to make millions and millions of rounds of ammunition each year.

Let's assume for the sake of argument that the rounds turned over by Teske are physically and chemically the *same* as the live rounds found on the set of *Rust* – this is not evidence of a saboteur, and it is not evidence that Mr. Kenney ever possessed these rounds, let alone provided them to the set of *Rust* either intentionally or mistakenly. Mr. Kenney cannot be impeached by something that he didn't see, never knew about and never possessed. This is a smoke screen created by the defense and was intended to sway and confuse the Court on July 12, 2024 and it was successful.

Baldwin's Motion to Dismiss filed July 11, 2024

On July 11, 2024, the State called CST Marissa Poppell to testify. On cross-examination defense counsel questioned Ms. Poppell about a *Good Samaritan* (Troy Teske) who turned in ammunition he stated was *related* to the *Rust* investigation. The defense was aware that Mr. Teske, not only turned in ammunition that he claimed was related to the *Rust* investigation, but they were aware that some of the rounds turned over had the same physical characteristics as the live rounds found on the set of *Rust*. The defense knew more than undersigned counsel knew about the rounds turned in by Mr. Teske. *See* State's Exhibit 14 (July 11, 2024 trial testimony of Marissa Poppell).

On redirect, undersigned counsel elicited testimony from Ms. Poppell that the rounds turned in by Teske were visibly dissimilar to the live rounds from the set of *Rust*. *See* State's Exhibit 14A. Undersigned counsel elicited this testimony because she believed it to be accurate. Undersigned counsel was never provided a copy of the doc report generated by the sheriff's department, never inspected the rounds, was never notified by law enforcement that any of the

rounds appeared similar to the live rounds from *Rust* and was completely unaware that any of the rounds turned over by Teske possessed the same physical characteristics as the live rounds from *Rust*. Undersigned counsel was relying on the two photos of the live rounds provided by Teske in November 2021 and again in January 2024 and Mr. Teske's statement to Mr. Kenney in November 2021 that none of the rounds in his possession had silver primers and all had dissimilarly shaped projectiles. Again, the defense had more information about the rounds turned in by Mr. Teske that undersigned counsel did. Ms. Poppell agreed on redirect that the live rounds dropped collected from Mr. Teske looked dissimilar to the live rounds found on the set of *Rust* and this testimony was incorrect as demonstrated by the examination of the three rounds in the courtroom on July 12, 2024. Ms. Poppell made a mistake because she had not viewed the live rounds turned in by Teske in several months and there are thousands of rounds (live, blank and dummy) of ammunition in evidence in this case. Human beings make mistakes – it does not mean they are lying or that they intentionally buried evidence as claimed by the defense. *See* State's Exhibit 15. Ms. Poppell's mistaken testimony and undersigned counsel's ignorance of the specific characteristics of the rounds collected from Teske do not make the rounds relevant or material to the case against Baldwin. No one on the prosecution team (to include law enforcement) ever intentionally kept evidence from the defendant, it simply didn't occur to the prosecution that the rounds were relevant to the case against Baldwin even if they were the same or similar to the live rounds found on the set of *Rust*. In fact, the State would have stipulated to a jury instruction that the jury should assume that if the live rounds turned in by Teske been tested by the FBI that the testing would have determined that the powder was consistent with the live rounds from *Rust*.

Late in the afternoon on July 11, 2024, the defense notified the Court and counsel for the State that the defendant would be filing a motion to dismiss based on the Teske rounds for the Court's consideration the following day. The Court initially asked the defendant to file the motion by 5:00 p.m. on July 11, 2024 so the State would have an opportunity to prepare some kind of written or verbal response. Defense counsel indicated that he could not provide the motion by 5:00 p.m. but stated he would provide it by 7:00 p.m. Undersigned counsel notified the Court of her intention to verbally respond to the motion the following day rather than provide a written response after receiving a motion to dismiss from the defendant at 7:00 p.m. during trial. The motion was received via email by undersigned counsel at 7:55 p.m.

It is worth noting that the defendant was being represented by at least nine attorneys (Heather LeBlanc, Alex Spiro, Luke Nikas, Jennifer Stern, Sara Clark, Michael Nosanchuk, Stephanie Keleman, Brooke Jordy (all of whom were present in New Mexico for the trial) and John Bash who did not appear for the trial. The State was represented by two attorneys and did not have the human resources to respond to a motion to dismiss and prepare for the next day's witnesses in one evening. The fact that the motion was raised during trial was a tactical decision by the defense to take advantage of the State's limited resources. The defense knew that some of the rounds turned in by Teske were the same or similar to the live rounds from the set of *Rust* and laid in wait to move to dismiss during trial when it had a tactical advantage. The defense scheduled its third evidence viewing in this case for June 18, 2024 that the defense suddenly cancelled without explanation on June 17, 2024 after CST Poppell had prepared hundreds of items of evidence for viewing.

On July 12, 2024, undersigned counsel expressed her concern to the Court that the defense was aware of the Teske rounds before the trial and likely learned of it from Ms.

Gutierrez's counsel (perhaps this was the reason they cancelled their scheduled evidence viewing). Defense counsel responded that he shouldn't have to disclose this information to the Court and if he was required to, it should be provided to the Court *in camera*. Without addressing whether the information concerning how long the defense knew about the Teske rounds and their similarity to the live rounds found on the set of *Rust* should be heard *in camera*, the Court agreed that the significance of the defense having knowledge of the Teske rounds prior to trial was relevant to whether the defendant suffered prejudice. The Court agreed to address the issue and never did. *See* State's Exhibit 16. The defense continued to argue that it was prejudiced by the State's failure to disclose the existence of the Teske rounds to the defense even though they clearly knew of details of the rounds turned in by Teske and knew that the rounds were in the possession of the sheriff's department. The State respectfully requests this Court order the defendant to provide all information regarding when and how they learned of the Teske rounds to the Court and the State so that a full record can be made for the likely possibility of a review by a higher court. The State is entitled to a full record for appellate review.

On the morning of July 12, 2024, the Court heard arguments related to the defendant's motion from Luke Nikas and Alex Spiro on behalf of the defendant and from undersigned counsel on behalf of the State. The Court heard additional testimony from CST Poppell related to the motion hearing. Oddly, the Court attempted to require the State to call its witnesses and ask questions relevant to the motion hearing in the presence of the jury. Undersigned counsel explained to the Court that it would not be appropriate to take testimony related to the motion in the presence of the jury. The Court continued to insist that the State take testimony from Corporal Hancock and Seth Kenney in the presence of the jury. Ultimately the Court agreed to

release the jury for the day to take evidence and testimony on the defendant's motion. *See* State's Exhibit 17.

ARGUMENT

Defendant's Motion to Dismiss

The defendant's motion noted that the State failed to follow-up and collect the rounds in Mr. Teske's possession after being made aware of them in November 2021. While this is true, the photo provided by Teske showed rounds dissimilar to the live rounds found on the set of *Rust*. It is true that undersigned counsel stated during her pretrial interview with Mr. Teske that she would work with law enforcement to collect the rounds. Undersigned counsel later decided not to collect the rounds after reviewing the photos of the rounds in Teske's possession and Mr. Teske's statement to Mr. Kenney that none of the rounds in his possession had silver primers. Undersigned counsel also considered the amount of time that passed between the death of Ms. Hutchins and the pretrial interview (more than two years) and the obvious lack of relevancy and materiality that the rounds had to the charges against Mr. Baldwin. This decision was supported when in January 2024 undersigned counsel was provided another photo of the rounds in Teske's possession by Mr. Bowles demonstrating the lack of similarity of the rounds in his possession with the live rounds from the set of *Rust*.

The defendant's motion asserted that undersigned counsel assisted Ms. Poppell in reframing her cover-up as an ordinary investigative decision when she assigned a different case number to the rounds after they were collected from Teske. There was no cover-up because there was nothing to cover up. Teske turned in live ammunition two and half years after the death of Ms. Hutchins that in no way related to the charges against Mr. Baldwin. Contrary to the defendant's assertion in his motion – there is absolutely no evidence that Seth Kenney was ever

in possession of live ammunition that had the same characteristics as the live ammunition from the set of *Rust* and the defendant presented no such evidence to the Court. Further the State agrees with Baldwin's assertion in his motion that he was unaware that live ammunition was on the set. However, as evidenced by his October 21, 2021, interview Mr. Baldwin was aware that dummy rounds look exactly like live rounds and that it was possible that live rounds could have been accidentally comingled by Ms. Gutierrez in her dummy rounds. *See* State's Exhibit 3, page 23.

Contrary to the assertions made by the defendant in his motion, the State never tried and was never going to try to establish a link between Baldwin and the source of the live ammunition beyond Mr. Baldwin's own statements provided to law enforcement on October 21, 2021. Baldwin didn't need to know that there were live rounds on the set for the State to prove its case against him. The case against Mr. Baldwin was solely based upon his actions when the gun was in his hand. The fact that it was obvious to nearly everyone on set that Ms. Gutierrez was inexperienced and incompetent was simply additional facts that might lead a reasonable person in Baldwin's position to take a moment to participate in the safety check of the ammunition made available to the actor. It is worth noting that two other actors on the set of *Rust* always checked the dummy rounds loaded into their real prop guns by Ms. Gutierrez to ensure they were inert. This has nothing to do with live rounds, a blank round accidentally placed in Baldwin's gun could have resulted in serious injury to anyone in its path. As stated above, there is no evidence that Kenney provided live rounds to the set or *Rust* and the State never intended to bury anything. It never occurred to the State that the Teske rounds were relevant to the case against Mr. Baldwin and they are not.

The defendant's motion is full of rank speculation that the Court cannot rely upon when dismissing a case with prejudice. The defendant's assertions that the evidence allegedly suppressed was exculpatory and material must have some basis in fact. The defendant cited to *State v. Davidson*, 2024 N.M. App. LEXIS 31 in support of its motion. *Davidson* is easily distinguishable from the instant case as *Davidson* dealt with the actual destruction of unquestionably exculpatory evidence in the form of a high-quality video of the killing that was the basis for the charges against the defendant that was obtained by law enforcement. The video later mysteriously went missing after being obtained by law enforcement. The video was also viewed and described in detail by witnesses who were able to demonstrate through testimony the exculpatory value of the missing video. In addition, law enforcement, with the knowledge of the prosecution, recorded and listened to the defendant's privileged conversations with his counsel. By contrast, the evidence in the instant case, if it were to be deemed material, still existed, could be examined and tested and was known to the defense prior to the beginning of trial.

The Court's Final Order of Dismissal with Prejudice

With regard to the Court's recitation of the defendant's previous motions to dismiss, undersigned counsel will largely rely on the previously filed pleadings and exhibits already in the Court record. However, in Paragraph 8 the Court quoted from the defendant's motion when the Court noted that Ms. Johnson disclosed over 1,100 pages of documents that undersigned counsel *refused* to provide. This assertion put forth in the defendant's motion and adopted by the Court in the Court's final order is false. Ms. Johnson provided 1,100 pages of emails that were redacted as part of the defendant's IPRA request to the First Judicial District Attorney's Office. This IPRA response was not in the Special Prosecutors possession until she requested it and received it from the District Attorney's Office on or about June 6, 2024 when the defense began

requesting an unredacted version of the IPRA response. *See* State's Exhibit 19. Thereafter undersigned counsel attempted to work with defense counsel, Sara Clark, to address any outstanding discovery issues related to the IPRA response and received no response from Ms. Clark. *See* State's Exhibit 18.

The State agrees with the recitation by the Court of the testimony as outlined in paragraphs 11-15. However, the Court omitted the fact that on July 11, 2024 defense counsel specifically cross-examined CST Poppell about the fact that some of the rounds turned over by Teske had silver primers and Starline Brass casings thus demonstrating that the defense had knowledge of the rounds and the physical characteristics of the rounds prior to trial. Specifically, in paragraph 15 the Court noted that the defense established that the defense "was not given the opportunity to inspect the newly collected ammunition when Defendant inspected ammunition inventoried under the *Rust* investigation case number." However, the defendant was clearly aware that the ammunition was in the possession of the sheriff's department and was also aware that some of the rounds possessed the same characteristics as the live rounds from *Rust* and could have requested to inspect them at any time but failed to do so. Moreover, the defense could have requested undersigned counsel send the rounds to the FBI for chemical and ballistics testing but never made such a request.

The defense did not make these requests because it would have ruined the nature and surprise of the motion to dismiss that it laid in wait to file until trial had already begun and it would have limited the defense's ability to quickly and efficiently manipulate the facts before the Court. A similar issue arose in *State v. Bryant* where the State was in possession of swabs containing gunshot residue and failed to have them chemically tested. The defendant claimed that had the swabs been tested they would have proven that he was not the shooter. The Court

found that a *Brady* violation did *not* occur because, just as in the instant case, the defendant was aware of the existence of the evidence prior to trial. 2023-NMCA-016.

Moreover, a dismissal with prejudice based on evidence that still exists and was known to the defense prior to trial (no one knows how long prior to trial the defense became aware of the Teske rounds because the Court decided sua sponte not to inquire of the defense after the issue was raised by the State). The defendant bears the burden of establishing a *Brady* violation. *Smith v. Secretary of NM Dept. of Corrections*, 50 F.3d 801 (1995). The *Smith* Court also noted “The *Brady* principle has limitations. The Constitution, as interpreted in *Brady*, does not require the prosecution to divulge every possible shred of evidence that could conceivably benefit the defendant. Due process only requires the disclosure of material exculpatory evidence which, if suppressed, would deprive the defendant of a fair trial. Here, the defendant knew of the Teske rounds prior to trial and argued to the Court “The defendant would have done things differently. The defendant would have opened differently, would have asked questions differently. We're talking about the conduct of the prosecution. We're talking about a prosecution that didn't preserve those bullets, that didn't collect them at all, that didn't turn them over...But the trial would have been conducted differently.” There is no basis for the defense arguments that they were cheated out of adequately preparing for trial and would have done things differently had they known about the Teske rounds – they knew about them. Moreover, *Brady* violations do not center around the conduct of the prosecution, they center around the character of the evidence. See *Smith* at 823 (If the suppression of evidence results in constitutional error, it is because of the character of the evidence, not the character of the prosecutor.)

The Court's recitation of the State's arguments in paragraphs 20-25 is accurate and undersigned counsel stands by her statements. There is nothing exculpatory, relevant or material about the rounds in Mr. Teske's possession as they relate to the charges against Mr. Baldwin.

In paragraphs 29 and 30 the Court recited facts related to Mr. Kenney's testimony, but the Court failed to take into consideration that none of the ammunition in the possession of Mr. Teske was ever in the possession of Mr. Kenney, seen by Mr. Kenney or known to Mr. Kenney. The Court seems to establish a nexus between the ammunition possessed by Teske and the ammunition possessed by Kenney after the 1883 training in Texas that simply does not exist. The Court's recited facts also fail to note the only under oath testimony related to the relevance of the Teske rounds as compared to the rounds brought back to New Mexico from Texas by Mr. Kenney. Mr. Kenney testified about the rounds belonging to Mr. Reed that were in Teske's possession as follows:

A. ... These reloads are some of the ones that Thell left along with his guns for Troy Teske to store.

Q. So these never went to the set of 1883?

A. Absolutely not. ...

Q. And did they ever go to you?

A. No.

Q. Because they never went to you, were you ever able to intentionally or mistakenly provide them to the set of *Rust*?

A. Definitely not. ...

Q: So everything that you brought back from Texas is in the custody of the Sheriff's department?

A. Correct.

Q. Did you at any point in time go – did you ever exchange ammunition with Thell Reed or Troy Teske again after the death of Halyna Hutchins?

A. No.

Q. So any ammunition that would be in the possession of Mr. Teske, is that anything that you have ever had possession of?

A. No. No. I've only once received .45 Colt live ammunition from someone and that was Thell and that was on our way headed to Texas. And, again, I hadn't opened the can until we got to Texas.

Mr. Kenney's under oath testimony demonstrated that Mr. Kenney was never in possession of any rounds with the same or similar characteristics of the live rounds from *Rust* because all of the rounds he brought to New Mexico from Texas are in the custody of the sheriff's department and have been determined to be dissimilar to the live rounds found on the set of *Rust*. This is consistent with the photos and statements of Teske from November 2021, November 2023 and January 2024. Just because the live rounds that went to Texas and New Mexico with Kenney belonged to Thell Reed and the rounds in Teske's possession also belonged to Thell Reed does not mean that the ammunition was the same or even similar. The actual evidence and testimony before the Court demonstrated that Kenney was never in possession of live ammunition similar to the three Teske rounds that have the same characteristics as the live rounds from *Rust*. Conversely, the defense provided absolutely no testimony that supported its speculative theory that Mr. Kenney was in possession of rounds with the same or similar characteristics of the live rounds from *Rust* and planted them on the set of *Rust* to somehow discredit Ms. Gutierrez. See *State v. Martinez*, 2021 N.M. App. Unpub. LEXIS 407 *; 2021 WL 5768692. In *Martinez*, the Court found that "Defendant has not shown, and the record does not demonstrate, that Agent Matthews's report or the FBI investigative materials would have been favorable to his defense. 'Evidence is 'favorable to an accused' if its disclosure and effective use 'may make the difference between conviction and acquittal' regardless of whether such evidence is impeachment evidence or exculpatory evidence.'" *Worley*, 2020-NMSC-021, ¶ 23 (quoting *United States v. Bagley*, 473 U.S. 667, 676, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985)). The Court

continued, “[T]he district court rejected Defendant's argument as pure speculation, noting that Defendant provided no testimony or evidence supporting this allegation. Defendant renews this argument on appeal, and we reject it for the same reason—*Defendant's speculation is insufficient to establish either a Brady violation or an actual violation of his constitutional rights*. Accordingly, we decline to reverse the district court on this ground.”

In paragraph 32 of the Court’s order the Court explained that Corporal Hancock testified that CST Poppell gave false testimony. Corporal Hancock was asked on cross-examination if the testimony provided by CST Poppell was false and Corporal Hancock agreed that it was. Corporal Hancock did not choose the word *false*, she simply agreed that Poppell’s testimony was not accurate. This same issue arose in paragraph 37 of the Court’s order. Undersigned counsel agreed when asked if Poppell’s testimony was *false* because it was not accurate. Neither Corporal Hancock, nor undersigned counsel stated or believed that CST Poppell intentionally lied or misled the Court. She provided mistaken and inaccurate testimony because people occasionally make mistakes.

In paragraph 35 the Court took issue with supposed inconsistencies in the statements made under oath by undersigned counsel. Perhaps undersigned counsel was inarticulate during her testimony. There is a difference between the Teske live rounds being relevant to the *Rust* investigation as a whole and the live rounds being relevant to the incident that led to the charges against Mr. Baldwin. The Teske rounds have no relevance to the charges against Mr. Baldwin, his defense or any potential impeachment of Mr. Kenney who was entirely unaware of them. Similarly, the Court takes issue with the differences in the testimony between undersigned counsel and Corporal Hancock. It is not unusual that two people have slightly different recollections of a telephone conversation that lasted less than five minutes and took place more

than four months earlier. Undersigned counsel asserts that she was told that the doc report would be made and she recalls being under the impression that the doc report and ammunition would be somehow linked to the *Rust* case number. Undersigned counsel recalls Corporal Hancock expressing concern that Mr. Teske needed to be interviewed before relevancy (if any) to the *Rust* investigation could be determined. Undersigned counsel does not work at the sheriff's department and does not understand the protocols within the department for the cataloging of evidence, nor does she have any control over them. Undersigned counsel did not participate in any decision regarding case numbers, those decisions were made by SFSO personnel. Undersigned counsel testified to best of her recollection even if her recollection differs somewhat from that of Corporal Hancock.

In paragraph 42 the Court made the important distinction between *Brady* violations based on discovery that is discovered during trial and after trial. Relying on *Huerta-Castro* the Court noted that "discovery of evidence during trial requires an evaluation of whether the late tender has impeded the effective use of evidence in such a way that impacts the fundamental fairness of the proceedings." Again, the Court failed to consider the fact that the defense clearly knew about the evidence prior to trial and mysteriously cancelled an evidence viewing scheduled for June 18, 2024. The fact that this secondary evidence viewing was cancelled by the defense was mentioned by Poppell during her testimony on July 12, 2024.

The State does not take issue with the Court's recitation of the law in paragraphs 43-46 but does respectfully disagree with the Court's analysis of the facts presented during the hearing as they relate to the three-prong test for a *Brady* violation. The State agrees that the Teske supplemental report describing the rounds and Lieutenant Brandle's lapel video were not provided to the defendant. While undersigned counsel was not in possession of the supplemental

report and was unaware that a lapel video existed, she agrees that knowledge possessed by members of law enforcement is presumed to be known to the prosecution. Undersigned counsel vehemently denies that she made a deliberate and intentional decision to place the evidence and reports under a non-*Rust* related case number because she has no control over the manner in which the sheriff's department categorizes its evidence. However, undersigned counsel does not disagree with Corporal Hancock's opinion that she needed to interview Mr. Teske before unilaterally deciding that ammunition turned over two and half years after a shooting death by the long-time friend of one of the defendant's family members was relevant and should be comingled with the other evidence from the set of *Rust* and the execution of the *Rust*-related search warrants. Undersigned counsel would again point out that the ammunition was tagged into evidence and attempts were made by Corporal Hancock to interview Mr. Teske to no avail and the defense became aware of the existence of the ammunition prior to trial and took no steps to inspect the ammunition or have the ammunition tested. Why would the defense fail to inspect the ammunition and request the ammunition be tested if it was so highly exculpatory and critical to their case? Because this was all a ruse. Even if the ammunition was inspected and tested it had no exculpatory value to Mr. Baldwin or his defense and was entirely immaterial to the charges against him.

In paragraph 48 the Court determined that the evidence was exculpatory and noted that it was used to impeach CST Poppell. This is correct, the defense was able to effectively use the evidence to impeach CST Poppell – this is not supportive of a conclusion that the defendant's constitutional right to due process was violated due to a *Brady* violation. It is supportive of the opposite conclusion. The Court concluded that “evidence regarding the source of the live round that killed Ms. Hutchins, and additional information concerning how that live round arrived on

set, likely affects the jury's calculus of proximate cause and negligence by third persons." The State respectfully disagrees. The existence of live rounds on the movie set did not result in the death of Ms. Hutchins, nor is it evidence of criminal conduct on the part of anyone but the armorer. Bullets don't kill people by themselves. Ms. Hutchins died because a live round was loaded into a real prop gun by Ms. Gutierrez by her own admission and that gun was pointed at Ms. Hutchins and discharged by Mr. Baldwin. The State concedes that Mr. Baldwin would be entitled to the inclusion of UJI 14-251 and 14-252 as there is evidence that his actions may not have been the only significant cause of Ms. Hutchins death as a result of Ms. Gutierrez loading a live round into the prop gun without Mr. Baldwin's knowledge. However, the presence of live rounds on the movie set itself could never be a significant cause of the death of Ms. Hutchins because bullets don't kill people- they must be fired from a gun in order to be fatal and the gun must be pointed at a person. Moreover, it is common knowledge in the film industry and well within Mr. Baldwin's knowledge that dummy rounds look exactly like live rounds and therefore there is always a risk that they could be unintentionally comingled. The film industry unions have promulgated guidelines for the use of live ammunition on movie sets. Live ammunition is permitted on movie sets and is occasionally present on movie sets.

UJI 14-251 states in part that the State must prove that the defendant's act was a significant cause of the death and defines this to mean "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." The *defendant's* act must be uninterrupted by an outside event. In this case there was no act that interrupted Mr. Baldwin's actions of failing to participate in the safety check of the ammunition, cocking the gun (when the rehearsal did not call for the cocking of the gun), pointing the gun at

Ms. Hutchins (when the rehearsal did not call for the pointing of the gun in the direction of Ms. Hutchins) and pulling the trigger (when the rehearsal did not call for the pulling of the trigger). UJI 14-251 requires that the defendant's action be interrupted by an outside event and the existence of live rounds on the movie set prior to the defendant's actions is not an outside event because it does not interrupt the *defendant's* actions. The State asserts the same argument with regard to UJI 14-252. The State respectfully asserts that the Court had insufficient evidence to conclude that the Teske rounds were favorable to Mr. Baldwin as set forth in paragraph 48.

The Court concluded in paragraph 49 that the Teske rounds were material and that the disclosure of the evidence during the course of the trial impeded the effective use of the evidence to such a degree that it impacted the fundamental fairness of the proceedings. This can only be true if the defense learned of the existence of the ammunition during the trial, which it likely did not.

The Court further concluded that "had Defendant had access to the Teske-supplied ammunition before the third day of the jury trial, Defendant would have altered his approach to his preparation for trial and the trial itself." The Court made this conclusion without taking any evidence or testimony concerning how and when the defendant became aware of the existence of the Teske rounds. Moreover, even if the defense learned of the Teske rounds and their physical characteristics during trial there is no actual evidence that the rounds in Teske's possession that possessed the same physical characteristics as the live rounds from the set of *Rust* could ever have been planted by a saboteur. The Teske rounds didn't leave the State of Arizona until March 2024 and Mr. Teske previously disavowed all knowledge of possessing any rounds with silver primers. As the Court noted from *Harper*, prejudice must be more than speculative.

The Court outlined its analysis of the sanction of dismissal with prejudice as it related to *Harper* in paragraphs 52-54. The Court concluded in paragraph 54 that the disclosure of the Teske rounds was so late that it undermined the defendant's preparation for trial. The State asserts that the Court's conclusion lacks a sufficient factual basis. The Court is assuming that the defendant learned of the Teske rounds during trial even though the defense knew to cross-examine CST Poppell about the rounds. The Court is also assuming that the rounds in Kenney's possession from the 1883 training were the same as the three rounds collected from Teske even though there is no evidence of this. The rounds belonging to Thell Reed possessed a variety of different casings, primers and projectiles. There is simply no evidence that the Kenney was ever in possession of .45 caliber live rounds with a Starline Brass casing, silver primer and lead bullet with a six-millimeter meplate. The Court in *Harper* noted, "Extreme sanctions such as dismissal are to be used only in exceptional cases. The trial court should seek to apply sanctions that affect the evidence at trial and the merits of the case as little as possible." *Harper* at 750. The Court further held that "The focus in determining prejudice is whether the missing evidence is important and critical to the case. The potential for prejudice is manifest when, for example, material evidence is withheld altogether, or where the State withholds evidence until the eleventh hour and then springs it on the defendant. However, when discovery is merely delayed in reaching the defendant, ***or the defendant has knowledge of the contents of the unproduced evidence, determination of prejudice is more elusive.*** *Harper* at 752. Finally, the Court opined "... like outright dismissal of a case, the exclusion of witnesses should not be imposed except in extreme cases, and only after an adequate hearing to determine the reasons for the violation and the prejudicial effect on the opposing party." *Id.* In the instant case, the evidence still exists and can be subject to examination and testing (just as it was when the defense likely learned of its

existence) and the defendant knew of the contents of the unproduced evidence and very effectively cross-examined CST Poppell about the evidence.

In paragraph 57 the Court conducted an analysis relevant to its conclusion that the State should be barred from retrying Mr. Baldwin. The controlling case with regard to this analysis is *State v. Breit*, 122 N.M. 655 (1996) which was published twelve years after *Messier* and established a framework for the analysis of retrial. The *Breit* court held, “We therefore adopt the following test (implicit in *Day*) when a defendant moves for a mistrial, retrial, or reversal because of prosecutorial misconduct: Retrial is barred under Article II, Section 15, of the New Mexico Constitution, when improper official conduct is so unfairly prejudicial to the defendant that it cannot be cured by means short of a mistrial or a motion for a new trial, and if the official knows that the conduct is improper and prejudicial, and if the official either intends to provoke a mistrial or acts in willful disregard of the resulting mistrial, retrial, or reversal.” The Court continued, “Willful disregard” is a more precise term, emphasizing that the prosecutor is actually aware, or is presumed to be aware, of the potential consequences of his or her actions. The term connotes a conscious and purposeful decision by the prosecutor to dismiss any concern that his or her conduct may lead to a mistrial or reversal.”

In the instant case, any misconduct on the part of the State could have been cured by a short mistrial giving the defense an opportunity to inspect the Teske rounds and/or request to have them tested by the FBI or a jury instruction that the jury should assume that if the live rounds turned in by Teske been tested by the FBI that the testing would have determined that the powder was consistent with the live rounds from *Rust*. A mistrial in these circumstances could be considered *if* the defendant did not have actual knowledge of the rounds prior to trial. The State asserts that it never intended to provoke a mistrial and did not act with willful disregard of

a possible mistrial because the Teske ammunition is not material to case against Mr. Baldwin for all of the reasons outlined above. Finally, *Harper* requires that the Court consider less severe sanctions and the Court failed to consider less severe sanctions that were available given that the defense was aware of the Teske ammunition, but more importantly, because the ammunition still exists and can be examined and tested.

CONCLUSION

The State respectfully requests the Court reconsider its dismissal of the case with prejudice. The State further requests the Court order defense counsel to provide a description and all documents related to when and how they learned of the Teske ammunition so that the Court may properly consider prejudice to the Defendant and a record for possible review by a higher court can be created. Finally, the State requests the Court reconsider the language in the Court's Order Granting Defendant Alec Baldwin's Expedited Motion for Dismissal and Sanctions Under *Brady*, *Giglio* and Rule 5-501 NMRA concerning the veracity of witness Marissa Poppell.

Respectfully Submitted,

/s/ Kari T. Morrissey

Kari T. Morrissey

Special Prosecutor

First Judicial District

1303 Rio Grande NW, Suite 5

Albuquerque, New Mexico 87104

(505) 361-2138

ktm@morrisseylewis.com

I hereby certify that a true and accurate copy of the foregoing was provided to counsel for the defendant via e-mail this 30th day of August 2024.

/s/ Kari T. Morrissey

Kari T. Morrissey