

FILED
FIRST JUDICIAL
DISTRICT COURT

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

2023 JAN 31 PM 12: 12

STATE OF NEW MEXICO
Plaintiff

v.

No. D-0101-CR-202300 039

ALEXANDER RAE BALDWIN III,

Defendant

STATEMENT OF PROBABLE CAUSE

BACKGROUND - SYNOPSIS

On October 21, 2021, in the County of Santa Fe, State of New Mexico, a shooting involving a handgun/revolver (firearm) occurred that resulted in the death of Halyna Hutchins and the serious injury of Joel Souza. The shooting involved a .45 caliber revolver and occurred on a Western movie set located in rural Santa Fe County, referred to and known as Bonanza Creek Ranch (15 County Road 45, Santa Fe, NM 87508; 545 Bonanza Creek Ranch Road).

On this date, being filmed and/or rehearsed at this location was a film at the time named/referred to as "Rust". Through interviews, statements, and evidence it was learned that defendant Alexander 'Alec' Baldwin (hereinafter 'BALDWIN') was the lead actor in the film. Through these interviews, statements, and physical evidence it was also learned that BALDWIN was involved in and named as a primary producer of the film.

Through these same statements, interviews, and evidence it was determined that after lunch on October 21, 2021, the crew, production staff, camera crew, and actors were preparing for a scene set in the Church. (This was not an established rehearsal nor had filming commenced.) At this point, BALDWIN was seated in what is referred to and appears to be a church on this movie set. BALDWIN was in possession of a .45 long Colt caliber revolver type firearm, one of a type and kind often used and/or seen in or on Western genre type movie(s) and/or set(s). The firearm is a single action revolver handgun, which requires the cocking of the exposed hammer, which then rotates the cylinder and then the pressing of the trigger is required to fire the weapon.

In front of BALDWIN, standing, were victims Halyna Hutchins and Joel Souza. Hutchins and Souza were viewing and moving a camera for a possible set up for a later scene, to occur at a later undetermined date and/or time. Through these same statements, interviews, and physical evidence, it was learned that Halyna Hutchins was the Director of Photography for the film, and Joel Souza was the Director/Writer for the film.

Information and evidence obtained showed that BALDWIN was seated in a pew facing in a northerly direction, towards the front of the church. In front of him was Halyna Hutchins and

Joel Souza, and a camera operator, along with other crew (i.e. sound, script, costume, etc.). BALDWIN was wearing a shoulder holster, right hand draw, which was securing/holding the .45 long colt caliber, single action six shot revolver. BALDWIN was practicing drawing and pointing the weapon for the scene with guidance and instruction from Halyna Hutchins and Joel Souza.

The set-up was to be a close-up on BALDWIN and the firearm, as he drew the weapon and pointed it. Halyna Hutchins and Joel Souza were viewing the practice scene on a monitor attached to the camera. BALDWIN drew the revolver from the holster, pointed it at Halyna Hutchins, and fired the weapon. When reviewing the script and witness interviews, for this particular scene and close-up shot, evidence indicates the scene/shot did not require the weapon to be fired. It was also determined by consultation with expert armorers that in a rehearsal, a plastic gun or replica gun should be used as no firing of blanks is required. However, BALDWIN fired the single action .45 long colt revolver resulting in the discharge of a projectile that struck and traveled through right armpit area of Halyna Hutchins, exited her back (from the OMI's official report), then struck Joel Souza in the right shoulder and lodged into his right back.

At approximately 1:48 PM, the shooting was reported to Santa Fe County Regional Emergency Communications Center (RECC) via 911. This resulted in the response of Fire, Emergency Medical, and Santa Fe County Sheriff's Office personnel. This further resulted in a Case Number/CAD Incident number being generated, 2021-007949. The Santa Fe County Sheriff's Office conducted an investigation into this shooting under this Case Number, as a "Death Investigation". Detective Alexandra Hancock was assigned as the primary investigator.

The response of emergency personnel resulted in Joel Souza being transported by ambulance to St. Vincent Regional Medical Center located at 455 St. Michael's Drive, within the city limits of Santa Fe, NM. Halyna Hutchins was transported from the scene by air ambulance/helicopter to the Level 1 trauma center at the University of New Mexico Hospital located in Bernalillo County, Albuquerque, NM.

Halyna Hutchins was pronounced deceased at approximately 3:37 PM by attending medical personnel. Joel Souza was treated and released, but not before a projectile was removed from his back. The projectile appeared to be a lead projectile of the type and kind found in 'live' ammunition. This item was secured and turned over to the Santa Fe County Sheriff's Department.

As noted above and confirmed by the evidence and analysis, the recovered projectile first struck and then passed entirely through Halyna Hutchins and then struck Joel Souza. There was no evidence that the bullet ricocheted/struck any object or person before striking Halyna Hutchins. The projectile then penetrated through the front of Joel Souza's right shoulder and became lodged under the skin on his back. The Office of the Medical Examiner, State of New Mexico listed Halyna Hutchins cause of death preliminarily as "Gunshot wound of the chest" after conducting an autopsy on October 22, 2021.

The following additional information and evidence is provided in further support of probable cause of the enumerated crime(s) having been committed by BALDWIN:

FIREARM, AMMUNITION AND BALDWIN AS ACTOR and SHOOTER

Statements and evidence show BALDWIN was not present for required firearms training prior to the commencement of filming. Statements, depositions from OSHA, and evidence show BALDWIN was provided only minimal training on firearms, even after REED requested more training for BALDWIN. In the deposition taken from REED, she stated BALDWIN had very limited training on the cross draw that was required for the scene on the 21st and limited training in firearms and how to check his own firearm as to whether it was unloaded or loaded, in which REED felt it was very important in his role as RUST. A training session for at least an hour or more in length was scheduled, but the actual training consisted of only approximately 30 minutes as according to REED, BALDWIN was distracted and talking on his cell phone to his family during the training.

BALDWIN approached responding deputies on the day of the shooting, wanting to talk to them because he was the one who "...fired..." the gun. He was referred to and later interviewed by detective(s).

BALDWIN later asserted that he never fired the revolver, and that it had just "...gone off...". BALDWIN made this assertion public as well, in multiple media interviews conducted after the shooting. Many media interviews and law enforcement interviews were conducted by BALDWIN, and he displayed very inconsistent accounts of what happened during the incident when firing the gun that killed HUTCHINS.

Photo and video evidence from inside the church, on the day of the shooting show some of the rehearsal up to and including moments before the shooting. The photos and videos depict the above-described actions of BALDWIN prior to the shooting (practicing drawing and pointing the weapon). The photos and videos clearly show BALDWIN, multiple times, with his finger inside of the trigger guard and on the trigger, while manipulating the hammer and while drawing, pointing, and holstering the revolver.

The revolver involved in the shooting was seized by detective(s) as evidence. It was later submitted to the Federal Bureau of Investigation (FBI) crime lab for examination and analysis. As part of that examination/analysis, the FBI conducted a function/malfunction check of the revolver. This involved trying to get the weapon to fire without the trigger being depressed; i.e. striking the hammer at various, multiple angles against a solid object, and striking the hammer of the revolver with an actual hammer/mallet. The revolver did not malfunction (i.e. fire when it should not/accidentally). This analysis clearly showed that the weapon could not 'accidentally fire'; for the weapon to fire, the trigger had to have been depressed/pressed.

The analysis additionally included testing of and documentation of the sear/engagement points of the hammer as it is moved from the position of "at rest" (all the way 'down', against the frame in its lowest position) through each engagement of the single action hammer mechanism. The firearm possessed ¼ and ½ cock position safeties, and were found to function as designed; i.e. keeping the hammer from striking a cartridge primer without pulling the trigger. Additionally, at ½ cock, the cylinder is/was partially rotated making it impossible for the hammer and attached firing pin to strike a primer.

The FBI additionally analyzed various types and kinds of ammunition seized from the scene, including the prop truck. This included dummy rounds, blank rounds, and suspected live ammunition. A total of five (5) suspected live rounds one (1) spent casing of a live round that was discharged causing the shooting were seized by investigators. Evidence and statements indicate that aside from what Hannah Gutierrez-Reed (Armorer – Rust Production) may have brought to the set with her, all weapons and ammunition (blank, dummy) for the production were obtained from a supply company in Albuquerque, PDQ Arms and Prop, LLC.

Detectives investigated these facts, including service of a search warrant at the place of business of PDQ Arms and Prop in Albuquerque who was the supplier of the dummies and blanks to RUST. Several suspected live rounds of 45 Long Colt caliber cartridges were seized as a result; some supplied by the company owner to investigator(s), and some found at the place of business. These rounds were submitted to the FBI for comparison with the suspected live rounds found at the shooting scene. The ‘Explosives Chemistry’ examination of the rounds showed that the smokeless powder in the live rounds found at the scene did **not** match the live rounds seized from the props/arms supplier in question. This means the lives rounds on RUST did not match the rounds explosive chemistry taken from PDQ Arms and Prop.

The FBI lab determined that the five (5) suspected live rounds recovered at the scene of the shooting were indeed ‘live’ rounds, each possessing an unfired primer, powder, and bullet as part of the cartridge. These five rounds were found by detectives and crime scene technician(s) while processing the scene. The five (5) unfired rounds were found in the following locations: One (1) from SFSO Lt. Benavidez’ patrol vehicle (that he had seized from REED upon his arrival) two (2) from the top of the ‘armorer’s’ cart (including the one [1] spent live round casing), one (1) from a bandolier on the cart, one (1) from BALDWIN’S holster located inside the church, one (1) from an ammunition box located on the armorer’s cart. Along with the casing and fired projectile, there were a total of six (6) .45 “live” rounds that were discovered in various locations on the RUST set.

Evidence further shows that BALDWIN, as an actor who has extensive experience in the film industry involving firearm(s), failed to demand at least two (2) safety checks between the armorer and himself and witnessing the handling of firearms by a first assistant director. Standard protocol is the armorer is to show the actor the firearm, pull the bullets out in front of the actor, and demonstrate there are no live rounds (but dummies) in the firearm. BALDWIN knows this is standard safety protocol as he has mentioned it in media interviews and in law enforcement interviews. Hannah Gutierrez Reed (hereafter REED) did not do this protocol in front of BALDWIN. BALDWIN did not object to this action. REED discusses in her interviews with OSHA and law enforcement this should have occurred. REED also acknowledges in her interviews she should have been in the church with the firearm at all times. Instead, she left the church while BALDWIN was in possession of a firearm in close proximity to the cast and crew. BALDWIN further acknowledges that it is standard protocol for armorers to stay with the firearm at all times in the media and interviews.

Finally, BALDWIN directly pointed a firearm at HUTCHINS and SOUZA. Whether guided by her directions or not, BALDWIN knew the first rule of gun safety is never point a gun at

someone you don't intend on shooting. In addition, always assume a gun is loaded. Had BALDWIN performed the required safety checks with the armorer, REED, this tragedy would not have occurred. In addition, if BALDWIN had not pointed the gun at HUTCHINS and SOUZA, this tragedy would not have occurred.

This reckless deviation from known standards and practice and protocol directly caused the fatal shooting. By not receiving the required training on firearms, deviating from the required duties of checking the firearm with the armorer, letting the armorer leave the church against protocol, deviating from the practice of only accepting the firearm from the armorer, not dealing with safety complaints on the set, not making sure the protocol of safety meetings was occurring, putting his finger on the trigger of a real gun, not using a replica firearm for the unscheduled rehearsal, pointing the gun at HUTCHINS and SOUZA, and the overall handling of the firearm in a negligent manner, BALDWIN acted with willful disregard of the safety of others and in a manner which endangered other people, specifically HUTCHINS and SOUZA. BALDWIN clearly should have known of the danger of his actions which led to the death of HUTCHINS.

BALDWIN AS PRODUCER

Industry standards, best practices, common practices, historical practices, policies and/or procedures, and union guided policies and/or procedures require and/or mandate certain members of a filming crew have, assume or are assigned certain obligations and responsibilities. Industry expert(s) and/or armorer(s) were consulted for information and evidence in this industry. BALDWIN asserted and is clearly shown to be a producer on this particular film. Based on his position, BALDWIN, through act(s) and/or omission(s), contributed to or failed to mitigate or address multiple significant safety violations, issues, and/or concerns that resulted in multiple noted instances of recklessness leading up to, contributing to, and causing the shooting.

Since the shooting, BALDWIN has asserted publicly that he is an "...expert..." in the realm of firearms and filmmaking. Investigation has revealed that BALDWIN has been involved in at least forty (40) films or TV productions that involve firearms, with BALDWIN either directly handling/firing a weapon or in a scene with firearms being directly handled and/or fired by someone else.

Further investigation of this list revealed a multitude of instances either from the movie itself or from the movie poster showing BALDWIN with his finger in the trigger guard and on the trigger, in instances where according to industry standards and common firearm safety standards it should not have been. Experts, industry standards and basic firearms safety protocols and training consider this reckless behavior requiring immediate remediation.

Evidence shows BALDWIN failed to appear for mandatory firearms training and firearms safety training prior to filming. Evidence also shows BALDWIN requested and was afforded a training session 'on-set', and that through statements the training was estimated to be 30 minutes in length due to the distraction of him talking to his family on his cell phone during the training. The on-set and limited time of training does not comport to industry standards and evidence shows BALDWIN was in a position to manage, oversee, commence, and require safety training to industry standards. BALDWIN'S failure to ensure minimum standards were met is considered reckless in the industry.

Basic firearms safety protocols and industry standards are provided during this training, which includes basic firearm safety rules and mindset, including but not limited to; not touching/pressing the trigger until the shooter is ready to fire and is sure of his/her target; treating all firearms as if they are loaded; and not covering anything with the muzzle of a firearm the shooter is not willing to destroy. The evidence clearly indicates that BALDWIN recklessly ignored these rules, on multiple occasions, resulting in the fatal shooting.

Evidence shows that the production company hired REED as the lead armorer for the production. Evidence shows that REED possessed no certification or certifiable training, or union 'card' for this practice, and that she admitted she was the armorer for only one (1) film prior to this production, approximately in April of 2021. As the producer of a firearm intense film, evidence shows that BALDWIN allowed, through acts or omissions, the hiring of inexperienced and unqualified REED for this production, failed to mitigate or establish more precautions to protect against REED's inexperience, or failed to demand the minimum safety standards, protocols, and requirements on set.

REED was assigned by production to be an assistant prop master in addition to her armorer duties. Evidence shows that this resulted in REED not focusing her entire attention on her primary responsibility as armorer. Evidence shows BALDWIN violated industry standards and practices by allowing this reckless and generally prohibited practice, resulting in reckless action(s) taking place prior to and on the day of the shooting.

Evidence shows that Sarah Zachary was hired as the prop master for the production. It also shows that she was assigned to assist REED with her armoring duties. Evidence and statements show that Sarah Zachary possessed little to no experience with firearms, firearm safety, armorer duties and responsibilities, etc. It also shows that Sarah Zachary was assigned to/allowed to load and unload ammunition in firearm(s), handle firearm(s), and act as an armorer when on-set with actors/doubles taking possession of the firearms. Evidence shows this was done multiple times and without REED being on the set as well. Evidence shows that despite the production team's awareness of the safety issues, BALDWIN did not address this reckless process/procedure that is contrary to industry standards and safety protocols and commonly understood firearms safety procedures.

Prior to the shooting incident, Sarah Zachary had a negligent discharge while handling a revolver intended to be used by an actor in the filming. This weapon was not BALDWIN's weapon but had similar/same mechanical function and appearance (single action revolver) and was intended for use by the "...marshals...". Statements show that Sarah Zachary was holding and manipulating the weapon while walking and she discharged a blank cartridge into the ground next to her foot. Industry standards, practices and protocol consider negligent discharge(s) reckless in nature that require immediate action and/or swift mediation up to and including remedial training, demotion, removal from the set, termination, etc. Evidence shows BALDWIN failed to act to address this reckless situation or to direct REED to mitigate or address the situation.

Also prior to the shooting incident, another negligent discharge was committed by a stunt double as he was handling/manipulating a lever action period rifle, loaded and left unattended with the stunt performer while in a holding tent. BALDWIN failed to act, the evidence shows, to address this reckless situation or to direct REED to mitigate or address the negligent discharge.

Through evidence and interviews, these reckless and serious safety violations were deemed negligent by the investigation as there was no indication(s) or evidence that the firearm(s) in question malfunctioned at any time; rather there is evidence the weapon(s) fired because of mishandling/misuse by those handling the firearm, i.e., pressing the trigger when it should not be.

In his producer's position, the evidence indicates BALDWIN also did not act to address the lack of daily safety meetings that are required to be conducted by the 1st assistant director. Evidence indicates that on or about the 13th day of filming, only three (3) or four (4) safety meetings were conducted by the assistant director. Practice and standards investigated indicate that a daily safety meeting should be conducted with the crew, regardless of the scenes for the day's shoot. The lack of meetings and the lack of appropriate content of said meetings resulted in a climate of recklessness as evidenced by the conduct of the cast and crew documented through statements and evidence. In addition, no safety meeting was conducted on the day of the incident. Safety meetings were supposed to be listed on the call sheet daily but were not. Meetings were called randomly throughout the day with no mandatory attendance required. The meetings were impromptu. These meetings should, pursuant to standard protocols, be conducted in the morning prior to the beginning of the day, where all members of the cast and crew should be required to attend.

On October 20, 2021, the original camera crew resigned, citing safety concerns, commute times and distances, pay, and other issues. On October 21, 2021, a new crew was brought in to begin filming right away. Evidence indicates that during the church scene in question, the director and director of photography should have been outside of the church viewing the scene from a large monitor covered by a tent/shade screen commonly referred to as "video village". Statement(s) indicates that Joel Souza and Halyna Hutchins decided to be in the church with the camera crew, due to the abrupt change of the camera crew. Evidence indicates that BALDWIN failed to act to address any safety or continuity concerns with the new crew, causing a reckless situation to occur on the day of the shooting.

On the day of the shooting, evidence and statements show that impromptu plans were made to rehearse and then shoot a scene inside of the church, and for this particular scene, it was to only involve BALDWIN. Evidence and statements show that the 1st assistant director, David Halls (hereinafter HALLS) was present on the set. As with BALDWIN, evidence, common standards, protocol, and statements show that HALLS had the additional duty of 'safety coordinator' by virtue of his position. However, that position does not afford the handling or manipulation of firearms.

Evidence and statements also show that HALLS, by virtue of his position, is the first point of contact for an armorer when they bring a firearm on set and is the first person required to conduct a safety check with the armorer and weapon. Industry standards and procedures require

that the armorer, in the presence of the 1st assistant director, show the weapon is clear and safe, then if applicable, show the firearm is loaded with blanks or dummy rounds visually and physically checking each round individually for safety by pulling each round out of the firearm and showing the 1st assistant director and the actor. The 1st assistant director then follows the cue of the armorer calling cold or hot weapon on set then broadcasting that statement across the radio which notifies all cast and crew. Evidence clearly shows this did not occur on the day of the shooting, at least two (2) times. BALDWIN failed to address these reckless incidents and deviations from industry standards and firearms safety rules, directly contributing to the fatal shooting. HALLS did not adequately check the firearm with REED prior to handing it to BALDWIN, who additionally did not check it with the armorer, REED.

HALLS is further required to announce to crew when a firearm will be fired in the scene (i.e. announce 'fire in the hole' or other common phrase to put the crew on notice for shooting/loud noise/hearing protection, etc.). The evidence and statements show that this requirement did not meet safety and industry standards, and further shows that BALDWIN failed to address and/or mitigate this reckless and dangerous practice.

HALLS, again, by virtue of his position and industry standards and practices, is prohibited and/or strictly discouraged from handling any of the firearms on a set. As such, industry standards, policies and practices call for the armorer to be on set and to stay on set any time a firearm is on set. This practice and standard were not conducted on the day of the shooting, and was allowed by BALDWIN.

Prior to lunch, statements and evidence show that HALLS requested BALDWIN'S firearm be prepped and brought to the set by the armorer REED. REED states that she loaded the firearm with dummy rounds prior to lunch, so she didn't perform a second safety check on her own or with HALLS and the firearm (just showing him the barrel and not removing the bullets to show the firearm was safe) and then HALLS took possession of the firearm from REED. REED departed the church. HALLS provided BALDWIN with the firearm so he could rehearse/practice with the weapon. However, there are contradictory statements that REED brought an empty gun to HALLS and at some point, loaded it with dummy rounds while in the church. REED then showed HALLS the firearm. Again, REED did not do a proper safety check with HALLS or BALDWIN. REED then left the church. REED leaving the set and HALLS handling the firearm are considered very reckless actions according to industry standards, expectations, and common firearm safety protocols and considerations. There is no evidence or information that BALDWIN addressed or acted to mitigate these reckless action(s). In addition, for a rehearsal, a rubber or replica firearm should have been used. Only when the actual scene was to be filmed, should the weapon have been loaded with dummy rounds. BALDWIN, HALLS, AND REED all knew this was standard protocol.

Further evidence and statements show that when the crew took a break for lunch, firearms, including BALDWIN'S, were secured in the prop truck safe. Outside of the church was a cart used by the armorer (and prop master, contrary to standard protocol), that contained leather gear/rigs like holsters, belts, and ammunition. Evidence clearly indicates this cart and associated items was not secured during the break and was not in visual range of REED or Sarah Zachery for safety and security. The unsecured cart with equipment, ammunition, and firearms is

considered very reckless by industry standards and by common firearm safety standards and protocol. Evidence indicates that BALDWIN failed to act to address and/or mitigate these serious and reckless safety violations.

Upon returning from lunch, evidence and statements show that REED retrieves BALDWIN'S preferred revolver, but REED does not perform another safety check. Additionally, REED again is asked and complies with HALLS by handing him the firearm once inside the church. There are also contradictory statements that REED brought in the firearm empty, showed it to HALLS, and ultimately later loaded it with dummy rounds. Regardless, the evidence is consistent that REED failed to show HALLS each dummy round and pull them out for safety, nor did HALLS request it. REED did not show BALDWIN the loaded firearm either, or did he request to see the rounds, which is standard protocol. REED left the church. Evidence and statements also indicated that an 'after lunch' safety check of the firearm, to industry standards, between REED and HALLS did not occur. This 'after lunch' sequence of events is documented to have had no less than four (4) extremely reckless violations of industry standards, safety, protocol, best practices, and common firearm safety protocols in a very short, compressed period of time.

On the day of the shooting alone, evidence shows that no less than a dozen acts, or omissions of recklessness, occurred in the short time prior to lunch and the time of the shooting, and this does not include the reckless handling of the firearm by BALDWIN. BALDWIN, by act or omission or failure to act in his position as a producer directly contributed and/or failed to mitigate numerous reckless and dangerous actions during a very short time period.

Finally, industry standards, protocols, and common firearm safety procedures on movie sets require the armorer, after conducting a safety check with the 1st assistant director, to conduct a second safety check with the actor to be handling the firearm. This reckless violation of standards and firearm safety occurred two (2) times leading up to the shooting, and BALDWIN failed to act to mitigate or correct the reckless safety violations, neither in his capacity as actor nor producer.

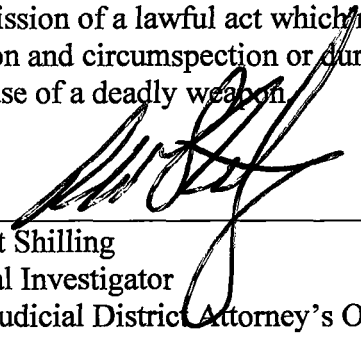
This reckless deviation from known standards and practice and protocol directly caused the fatal shooting. BALDWIN acted with reckless disregard and/or more than mere negligence in this incident. BALDWIN acted with willful disregard of the safety of others and in a manner that endangered other people and he clearly should have known the danger of his actions which led to the death of HUTCHINS. Furthermore, BALDWIN handled the weapon in a negligent manner.

Evidence exists to clearly show that On October 21, 2021, Halyna Hutchins was killed when BALDWIN fired a firearm that he pointed at her. The evidence and statements documented in this affidavit confirm **many** instances of extremely reckless acts or reckless failures to act by BALDWIN in a 10-day period. Evidence clearly shows that none of the incidents or issues were addressed by BALDWIN, in his position as actor or producer, to mitigate future occurrences of recklessness, correct reckless behavior, or correct training deficiencies.

BALDWIN's deviation from known standards, practice and protocol directly caused the fatal death of HUTCHINS. By not receiving the required training on firearms, not checking the firearm with the armorer, letting the armorer leave the firearm in the church without being

present, deviating from the practice of only accepting the firearm from the armorer, not dealing with the safety complaints on set and/or making sure safety meetings were held, putting his finger on the trigger of a real firearm when a replica or rubber gun should have been used, pointing the firearm at HUTCHINS and SOUZA, and the overall handling of the firearm in a negligent manner, BALDWIN acted with willful disregard for the safety of others and in a manner which endangered other people, specifically HUTCHENS and SOUZA. BALDWIN clearly should have known the danger of his actions which led to the death of HUTCHINS.

Probable cause exists that BALDWIN committed involuntary manslaughter contrary to and defined in NMSA 30-2-3 "Manslaughter" "...in the commission of a lawful act which might produce death in an unlawful manner or without due caution and circumspection or during the unlawful act not amounting to a felony, to wit: Negligent use of a deadly weapon



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