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When Acting Becomes Reality: Determining Liability when a Death Occurs on Set

BY PEARL HERTZ/ ON APRIL 4, 2022



Photo by Chris Murray from *Unsplash*

During the filming of the movie *Rust* in October 2021, actor Alec Baldwin “was holding an antique Colt .45 . . . when the prop gun discharged a live bullet.”¹ The bullet struck cinematographer Halyna Hutchins and director Joel Souza, resulting in the death of Hutchins. While many individuals postulated that other crew members were at fault, on February 15, 2022, the Hutchins family named Baldwin in a wrongful death lawsuit alleging “fail[ure] to perform industry standard safety checks and follow basic gun safety rules while using real guns.”² The complaint also argues that but for Baldwin’s reckless behavior, “Hutchins would be alive and well, hugging her husband and nine-year old son.”³ Requested damages include compensatory damages, punitive damages, and funeral and burial expenses among other things.⁴

Shortly after the incident, Baldwin did an exclusive interview with George Stephanopoulos of ABC News.⁵ Baldwin emphatically claimed that he felt no guilt as he was not responsible for Hutchins’ death. When handed the gun, Baldwin was told the weapon was “a cold gun” meaning that it was “either literally empty or loaded with non-firing ‘dummy’ rounds.”⁶ He therefore assumed that it was safe to use. While many celebrities supported Baldwin after the

news broke, others were quick to criticize him by declaring that the actor or actress is responsible for the weapon and should ensure the firearm is safe before pointing it at anyone.⁷ As part of his defense, Baldwin asserts that relying on armorers, prop department professionals, and assistant directors has been his practice throughout his forty year career in the entertainment industry throughout which there was no prior history of a similar incident.⁸

The occurrence begs the question as to where responsibility lies. Baldwin asserts that he never pulled the trigger, and that “[s]omeone is responsible for what happened, and [he] can’t say who that is, but [he] know[s] it’s not [him].”⁹ However, if the person holding the firearm is not liable, then who would be? The investigation revolves around a number of individuals including: Baldwin, who was holding the gun when it discharged; Dave Halls, the assistant director who handed the gun to Baldwin; and armorer Hannah Gutierrez-Reed, who was in charge of all weapons on set and loaded the firearm in question.¹⁰ Neither Halls nor Gutierrez-Reed have illustrious reputations.¹¹ Halls had previously been fired from the film, *Freedom’s Path*, when a similar incident led to the injury of a production member and “Gutierrez-Reed has also had complaints lodged against her for not following safety protocols from a film that was shooting just before *Rust*.”¹²

Another significant issue that the Defendants will have to overcome is regarding previous complaints of an unsafe environment. Prior to the incident in which Hutchins was fatally wounded, there had been two accidental discharges on the set.¹³ Moreover, complaints had been made to the producers that the set was “super unsafe” and on the morning of the deadly incident, crew members went on strike due to the hazardous conditions.¹⁴ If these complaints had been met with more concern, it is possible that Hutchins’ death could have been avoided altogether.

While “[f]atal on-set accidents involving firearms are rare, and film and television productions have rigorous protocols for the use of guns to prevent injury,” someone will have to be held accountable for the incident that claimed the life of the forty-two year old wife and mother.¹⁵ Who that person or entity is has yet to be determined but lawmakers are already considering legislation to prevent future incidents.¹⁶ California State Senator Dave Cortese “plans to introduce legislation that would restrict the use of live ammunition on film sets, along with . . . weapons capable of firing such rounds.”¹⁷ The legislation would ban weapons capable of shooting any kind of live ammunition, including blanks. This is to supplant and extend the guidelines set forth by the Industry Wide Labor-Management Safety Committee, which prohibit live ammunition on movie and television sets.¹⁸

It is likely that once the negligent party is determined, there will be an out of court settlement resulting in millions of dollars in damages paid out to the Hutchins’ family.¹⁹ Since “New Mexico is a ‘several liability state,’ [if it does go to court] damages will be ‘apportioned’ based on percent of fault.”²⁰ It is thus probable that the attorneys representing Hutchins’ estate will maintain that Baldwin is the most negligent actor to ensure sufficient damages.²¹ One thing is

certain, the necessity of using real weapons on film and television sets is now in the spotlight and given the publicity of this event, the legislature will hopefully take measures to prevent such an avoidable incident from happening again.

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