

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

STATE OF NEW MEXICO

Plaintiff,

vs.

ALEXANDER RAE BALDWIN III,

Defendant.

No. D-0101-CR-202300-039
Judge Mary Marlowe Sommer

**DEFENDANT'S NOTICE OF WITHDRAWAL OF NOTICE OF UNLAWFUL
ENHANCEMENT AND MOTION NOT TO BIND OVER ENHANCEMENT**

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Counsel for Defendant

Alexander R. Baldwin III, by and through undersigned counsel, respectfully submits this Notice of Withdrawal of his February 10, 2023 Notice of Unlawful Enhancement and Motion Not to Bind Over Enhancement (the “Motion”). The Motion explains that the government had unconstitutionally charged Mr. Baldwin with an enhancement that did not exist at the time of the accident, and the government has now withdrawn the enhancement after the putative special prosecutor admitted in correspondence to Mr. Baldwin’s counsel that she “100 percent agree[d]” that the enhancement was unlawful. Exhibit C (February 16, 2023 1:20 PM Email from A. Reeb to L. Nikas, et al. re: Motions on Firearm Enhancement). In light of the government’s concession that its decision to charge the enhancement was legally erroneous, the Motion is now moot.

1. On January 31, 2023, the government filed a criminal information charging Mr. Baldwin with two alternative counts of involuntary manslaughter (the “Original Information”) arising out of the tragic death of Halyna Hutchins on the set of the movie *Rust*. With respect to the second alternative count, the Original Information stated: “This offense shall be enhanced pursuant to the firearm enhancement statute, §31-18-16, NMSA 1978.”

At the time of the offense, the enhancement carried a three-year maximum sentence and could have applied only if Mr. Baldwin had “brandished” a firearm—i.e., acted with the “intent to intimidate or injure a person.” NMSA 1978, § 31-18-16(A), (D) (2020). But the government had not alleged such an intent, and the alleged facts make clear that Ms. Hutchins’s death was an accident. Nevertheless, the government filed the Original Information in reliance on the version of the enhancement as amended on May 18, 2022—almost seven months *after* the charged conduct

occurred—which applies where “a firearm [i]s discharged in the commission of a non-capital felony” and increases the maximum sentence by five years. As set forth in the Motion, the inclusion of the enhancement thus violated the Ex Post Facto Clauses of both the United States and New Mexico Constitutions.

Members of the prosecution team had amplified the error in the Original Information by repeatedly giving interviews on national television in which they erroneously claimed that the enhancement was not only applicable to Mr. Baldwin, but mandatory, and that Mr. Baldwin was facing an additional five years in prison as a result. *See* Motion at 7, n. 5 (citing Interview by Sean Hannity with Andrea Reeb (Jan. 21, 2023), <https://www.foxnews.com/video/6319006222112> (special prosecutor misstating that “there would be the mandatory five years in prison if [Mr. Baldwin] was convicted if they find that he used a firearm”); Interview by Jeanine Pirro with Mary Carmack-Altwies and Andrea Reeb (Jan. 19, 2023), <https://twitter.com/JudgeJeanine/status/1616239686262947841> (District Attorney commenting that the firearm enhancement of five years “is in fact mandatory”)). The Motion clarified that the prosecutors’ basic legal error meant that Mr. Baldwin faces, at most, a sentence of 18 months, and that the enhancement is entirely inapplicable.

2. Given that the Motion set forth substantial—indeed, clearly correct—legal arguments showing that Mr. Baldwin is legally innocent of the portion of the Original Information carrying the greatest penalty, it demanded careful consideration by the government. Instead, a spokesperson for the government immediately issued an extraordinary statement to the media characterizing the Motion as an “attempt to distract” from the case by Mr. Baldwin’s “fancy

lawyers.” Gabrielle Fonrouge, *Alec Baldwin attorneys seek to reduce possible penalty in Rust movie set manslaughter case* (Feb. 10, 2023), <https://www.cnbc.com/2023/02/10/rust-shooting-alec-baldwin-possible-penalty.html>.

Two days later, on Sunday, February 16, Andrea Reeb, the putative special prosecutor,¹ sent a lengthy email to Mr. Baldwin’s counsel in which she accused Mr. Baldwin’s counsel of failing to follow proper procedure, demanded Mr. Baldwin withdraw the Motion, and even threatened counsel with sanctions if they refused to do so. Exhibit A (February 16, 2023 11:15 AM Email from A. Reeb to L. Nikas and H. LeBlanc re: Motion on Firearm Enhancement). Approximately twenty minutes later, before Mr. Baldwin’s counsel had responded to the initial missive, Ms. Reeb sent another email, noting that she would “look at the specific numbers and sections to make sure [they had] it correct”—apparently indicating that up to that point, the government had never undertaken to examine the statutes charged in the Original Information. Exhibit B (February 16, 2023 11:37 AM Email from A. Reeb to L. Nikas and H. LeBlanc re: enhancement).

Less than two hours later, Ms. Reeb emailed Mr. Baldwin’s counsel a third time, now noting that she had been “busy in session all week” due to her simultaneous service in the New Mexico Legislature, but that she had finally taken the time to examine the enhancement statute

¹ Mr. Baldwin has filed a motion seeking to disqualify Ms. Reeb from serving as special prosecutor due to her unconstitutional simultaneous service as a state legislator and prosecutor. *See Defendant’s Motion to Disqualify the Special Prosecutor under Article III of the New Mexico Constitution (“Motion to Disqualify”)* (Feb. 7, 2023).

and now “100 percent agree[d]” with Mr. Baldwin’s “assessment of the issue.”² Exhibit C (February 16, 2023 1:20 PM Email from A. Reeb to L. Nikas, et al. re: Motions on Firearm Enhancement). She promised that the government would “amend the criminal information to take off the firearm enhancement.” *Id.* And she requested that Mr. Baldwin withdraw the Motion in light of the government’s change in position.

3. After waiting more than a week, on February 20, 2023, the government filed a First Amended Criminal Information (the “Amended Information”), which omits the unconstitutional enhancement. The government has nevertheless continued to issue statements to the media criticizing Mr. Baldwin and his counsel for filing a meritorious motion, stating that the government’s withdrawal of the enhancement is intended to “avoid further litigious distractions by Mr. Baldwin and his attorneys” and that the prosecution’s priority is “securing justice, not securing billable hours for big-city attorneys.” Julia Jacobs, *‘Rust’ Prosecutors Downgrade Alec Baldwin’s Manslaughter Charges*, NY Times (Feb. 20, 2023), <https://www.nytimes.com/2023/02/20/arts/alec-baldwin-manslaughter-charge-rust.html?smid=nytcore-ios-share&referringSource=articleShare>.

Mr. Baldwin accordingly provides notice to this Court that, based on the charges presented in the Amended Information, the Motion is now moot. Mr. Baldwin accordingly withdraws the

² When District Attorney Mary Carmack-Altewies sought funding for Ms. Reeb, she explained that Ms. Reeb would be able to “devote her full time and attention to this matter.” Motion to Disqualify, Ex. C, at 2-3.

Motion, but reserves and specifically does not waive all rights to challenge this or any other enhancement in the event the government attempts to add an enhancement at a later date.

Date: February 20, 2023

Respectfully submitted,

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By: /s/ Luke Nikas

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CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2023, I electronically filed the foregoing with the Clerk of the Court using the Court's electronic filing system, which caused all participants and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Heather LeBlanc
Heather LeBlanc

Exhibit A

From: Andrea Reeb <andrea@reeblaw.org>
Sent: Sunday, February 12, 2023 11:15 AM
To: Luke Nikas; Heather LeBlanc
Cc: Mary Carmack-Altwives; Jennifer Padgett; harry.taub@icloud.com
Subject: Motion on Firearm Enhancement

Good morning....

We are a tad confused on your motion on the firearm enhancement. In New Mexico, you give notice you are pursuing a firearm enhancement as we did in the criminal information and/or notice. You then give the statute 31-18-16. It doesn't matter how large the firearm enhancement is...3 or 5 years. At trial, the jury makes a specific finding "the defendant used a firearm to commit the felony" and then the court decides what the proper enhancement is during sentencing. At a minimum...it is a 3-year enhancement. The law did change after your client's criminal act happened, but regardless, the 3-year enhancement will be the minimum depending on the theory. If the judge finds that the newest law is applicable, it could be 5. We are requesting you withdraw this motion as it does not correlate to how the process works here in New Mexico. Local counsel should have advised you of that issue. This often happens when we are dealing with out of state attys and local counsel who doesn't specialize in the criminal area. Ms. LeBlanc can be held responsible for sanctions etc if you aren't following proper procedure. The time to address this issue is at trial. All we are required to do is give you notice we are pursuing "A firearm enhancement"...not how many years. Please review the law and let us know how you intend to proceed on this issue. Sincerely Andrea

Exhibit B

From: Andrea Reeb <andrea@reeblaw.org>
Sent: Sunday, February 12, 2023 11:37 AM
To: Luke Nikas; Heather LeBlanc
Subject: enhancement

And also...let me look at the specific numbers and sections and make sure we have it correct. Regardless, we just amend the criminal information. The judge doesn't make this finding until later...is my understanding of the procedure .

Exhibit C

From: Andrea Reeb <andrea@reeblaw.org>
Sent: Sunday, February 12, 2023 1:20 PM
To: heather@bll.law; Luke Nikas; Alex Spiro; Jason Bowles; Todd Bullion
Cc: Mary Carmack-Altewies; Jennifer Padgett; harry.taub@icloud.com
Subject: Motions on Firearm Enhancement

Dear all...I have taken all morning, as I was busy in session all week, to look at your firearm enhancement issue. Mary and Jennifer are still in a murder trial. I 100 percent agree with your assessment on the issue. I will have our documents drafted to amend the criminal information to take off the firearm enhancement and file something withdrawing the firearm enhancement. We missed it by 3 months...which does take us back to the 3 year brandishing issue. I still believe this wasn't timed pursuant to procedure correctly, but regardless, it made me really look into the issue. So, hopefully, once these documents are filed, you will withdraw those motions as they are moot.

Second, counsel for Mr. Baldwin...I have spoken to Mary who is in agreement that we plan on sending all correspondence through the local atty of record..Ms LeBlanc. We feel more comfortable with that as she is technically responsible for your teams actions as she is the local atty of record. I assume she can just forward correspondence to you and answer on your behalf for the team. Please acknowledge you all received this email as some of your emails have been shooting back. And Ms. LeBlanc...please send us the COR for Baldwin so we can make sure we are all on the same page prior to your agreeing to any extension. If not, we can have the 1st appearance and argue the extension with the court on your excusal of me.

Jason..I know we have worked out Hannah's COR to be the same..standard conditions. I look forward to you getting those to me also with your waiver of arr.

Please let me know when you have withdrawn your motions.

I will email you separately in the future, but for this issue, it was easier to email you all together. Happy superbowl Sunday.

Sincerely, Andrea

Sent from [Mail](#) for Windows