

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,

PLAINTIFF,

VS.

ALEXANDER RAE BALDWIN III,

DEFENDANT.

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

**ALEC BALDWIN'S REQUEST FOR LEAVE TO FILE SUPPLEMENTAL BRIEF  
IN FURTHER SUPPORT OF DISMISSAL BASED ON THE STATE'S  
NEW, UNCHARGED THEORY OF CRIMINAL LIABILITY**

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Defendant Alec Baldwin, by and through his attorneys, requests leave to file a supplemental brief in further support of dismissal based on the State's new, uncharged theory of criminal liability, which was not disclosed until yesterday, and in support thereof states as follows:

1. On May 6, 2024, Baldwin filed a Motion to Dismiss the Indictment for Failure to Allege a Criminal Offense (the "*Foulenfont* Motion") based on the only theory of liability contained in the indictment. At the time of filing, Baldwin had no reason to believe the State was pursuing any theory of criminal law other than that which is contained in the indictment and embodied in the instructions that were given to the grand jury.

2. Yesterday, June 19, 2024, in response to a motion *in limine* to preclude irrelevant expert testimony regarding "the roles and responsibilities of a producer on a movie set," the State disclosed for the first time that it seeks to punish Baldwin for conduct that is reflected nowhere in the indictment. Specifically, the State argues that Baldwin can be held criminally liable for the death of Halyna Hutchins because, as a producer, he was "responsible for the work being done by the crew" and had "the responsibility to ensure proper training and safety." *See* State's Response, at 6; *see also id.* at 10 (arguing that "the requirements" of a producer "as [they] relate to safety and the defendant's role as a producer" go "to the heart of the case").

3. The indictment charges Baldwin with an "unlawful act" that took place "on or about October 21, 2021." According to the indictment, the "unlawful act" was the "negligent use of a firearm" or, in the alternative, "an act committed with total disregard or indifference for the safety of others." To return an indictment on the latter count, the State instructed the grand jury that it had to find probable cause that Baldwin "discharged 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 that "this happened in New Mexico on or about October 21st,

2021.” Moreover, the grand jury was required to find probable cause that Hutchins’ death “was a foreseeable result of” one of these two acts—the negligent use of a firearm, or the “discharging [of] a firearm during the production of a movie,” etc.

4. The facts presented to the grand jury and the State’s instructions on “the relevant law in this case” make clear that the conduct on which the indictment is based relates solely to Baldwin’s handling of the firearm in the moments leading up to Halyna Hutchins’ death. The word “producer” is not mentioned once in the State’s instructions to the grand jury.

5. If Baldwin had known the State sought to punish him for his actions as a producer, he would have prepared for trial in a completely different manner—interviewing different witnesses, consulting different experts, investigating different time periods, etc.

6. A significant variance between the indictment and the evidence adduced at trial denies a defendant the “fundamental” “right to be informed of the nature and cause of the accusations filed against him” because it “destroys his right to be on notice of the charge brought in the indictment.” *Hunter v. New Mexico*, 916 F.2d 595, 598 (10th Cir. 1990) (citing U.S. Const. amend VI); *see also State v. Johnson*, 1985-NMCA-074, ¶ 26, 707 P.2d 1174 (reversing conviction because defendant “had no notice that he would be expected to defend against” charge not contained in indictment).

7. Baldwin requests leave to file a supplemental brief, no more than 10 pages in length, based on the State’s new, uncharged theory of criminal liability. Baldwin respectfully submits that this issue cannot be dealt with piecemeal through motions in limine or objections at trial—because as the State now concedes, it goes “to the heart of [its] case.” Requiring Baldwin to defend against a charge not contained in the indictment is both unconstitutional and extremely prejudicial to Baldwin’s ability to defend against the crime he *was* charged with.

8. If leave is granted, Baldwin will immediately file a supplemental brief of no more than 10 pages in length. “A defendant in a criminal case is entitled to know what he is being charged with and to be tried solely on those charges.” *Johnson*, 1985-NMCA-074, ¶ 26.

Date: June 20, 2024

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: /s/ Luke Nikas

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 20, 2024, a true and correct copy of the foregoing brief was emailed to opposing counsel.

/s/ Heather LeBlanc  
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