

FOR IMMEDIATE RELEASE:

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Attorney General Hector Balderas Statement on Kari Brandenburg Investigation

Albuquerque, NM – New Mexico Attorney General Hector Balderas released the following statement today regarding the Kari Brandenburg investigation:

“Today my office released detailed findings from a four-month-long investigation regarding a public referral from the Albuquerque Police Department alleging that Bernalillo County District Attorney, Kari Brandenburg, engaged in bribery or intimidation of witnesses. The investigation concluded that there is insufficient evidence to bring charges of bribery or intimidation of witnesses against District Attorney Brandenburg. This conclusion was based on APD case materials, and additional evidence gathered by my office during its expanded, independent investigation. While we did not find sufficient evidence of criminal conduct, there were identifiable leadership failures to which both agencies can take immediate corrective action and begin to re-focus on serving the people of Albuquerque and Bernalillo County.”

Attached is a copy of the letter Attorney General Balderas sent to the chief of the Albuquerque Police Department this morning outlining the findings of the investigation.

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Attorney General Of New Mexico

HECTOR H. BALDERAS
Attorney General

ELIZABETH A. GLENN
Chief Deputy Attorney General

May 14, 2015

Chief Gorden Eden
Albuquerque Police Department
400 Roma NW
Albuquerque, NM 87102

Re: Findings on referral alleging Kari Brandenburg engaged in bribery and/or intimidation of witnesses

Dear Chief Eden:

This letter is written to inform you of the outcome of the Office of the Attorney General (OAG) review and investigation of the above-referenced referral from your agency. While it is not standard practice for the OAG to write a document of this nature in order to convey our findings, I have determined that in this instance, based on the public release of the investigative file that it is appropriate to provide extensive detail supporting my decision.

Background:

On November 25, 2014, the OAG received a public referral from the Albuquerque Police Department (APD) related to Second Judicial District Attorney Kari Brandenburg and allegations of bribery of witnesses. The referral stated "during the investigation of three incidents occurring in 2013, information arose regarding possible violations of Section 30-24-3 (bribery and intimidation of a witness) in two of these cases." APD requested that the OAG review APD's investigation and make any recommendations regarding the charges.

For the last four months, my office has examined the reports and evidence provided by APD and engaged in a follow-up investigation, interviews and analysis. The materials examined, and follow-up investigation conducted, focused exclusively on possible criminal conduct by Kari Brandenburg. Jurisdiction over offenses allegedly committed by Justin Koch remains with the local district attorney, until such matters are either declined or conflicted out to another prosecutor.

Conclusion:

As discussed in more detail below, OAG has concluded that the facts and evidence obtained and reviewed do not support filing criminal charges against Kari Brandenburg. Nevertheless, this referral has raised concerns regarding actions taken by both Ms. Brandenburg and your agency.

Method of Review and Follow-Up Investigation:

An OAG prosecutor reviewed all materials turned over by APD and by Brandenburg's attorney, Peter Schoenburg. An OAG Special Agent was assigned to conduct a follow-up investigation, including conducting interviews with five additional witnesses. After concluding all interviews, the OAG Special Agent drafted a final report.

Findings:

1. Evidence does not support a charge that Kari Brandenburg bribed Andrew and/or Victoria Baros:

Based on the facts relevant to this matter, in order to prove a violation of NMSA 1978 Section 30-24-3(A)(3)(1997), the State would have to prove that Brandenburg intimidated or threatened Andrew or Victoria Baros or gave or offered to give anything of value to Andrew or Victoria Baros with the intent to keep either person from truthfully reporting to a law enforcement officer, or any agency of government that is responsible for enforcing criminal laws, information relating to the commission or possible commission of a felony offense. There was no evidence presented that Brandenburg intimidated or threatened either Andrew or Victoria Baros. Therefore, the State was left to examine whether Brandenburg offered to reimburse Andrew or Victoria Baros for the stolen handgun with the intent to keep them from truthfully reporting to law enforcement information relating to the larceny of a firearm allegedly committed by her son, Justin Koch.

Based on information provided and made public by APD, the alleged larceny of a firearm took place on July 7, 2013 at the home of Andrew and Victoria Baros. That same day, Victoria Baros reported to police that Koch stole her handgun. Andrew Baros first made contact with Brandenburg via Facebook on July 8, 2013. It wasn't until July 19, 2013 that Brandenburg told Andrew Baros that she would see that they were compensated for the stolen handgun. The evidence presented showed an \$800 reimbursement check, made payable to Andrew Baros on August 6, 2013, was facilitated through Deborah Manchester from Koch's trust account. Although something of value was given to Andrew or Victoria Baros as reimbursement for the stolen handgun, there is no evidence showing that Brandenburg facilitated this payment with the intent to keep Andrew and Victoria Baros from truthfully reporting or giving information about Koch's involvement to law enforcement. In fact, by the time Andrew Baros first communicated with Brandenburg, Victoria Baros had already called the police and named Koch as the only suspect. The evidence showed that in later email communications on July 23, 2013, Andrew Baros informed Brandenburg that

he had reported the stolen handgun. On July 24, 2013, Brandenburg responded and said, "I am glad you reported the gun stolen. You needed to do that to protect yourselves."

Brandenburg did express concern about Koch being charged with a felony and said that if Koch was charged and convicted of a felony, his life would be over. She told Andrew Baros that her goal was to keep Koch out of jail. However, these statements to Andrew Baros occurred five days after Brandenburg offered to reimburse him for the handgun. There is no evidence presented that Brandenburg ever asked either Andrew or Victoria Baros not to call the police, not to provide truthful information to law enforcement, or to refrain from pursuing the prosecution of Koch. Even after Brandenburg learned that Andrew Baros had in fact called the police, Andrew Baros still received an \$800 check on August 6, 2013 for the stolen firearm.

When questioned by Detective David Nix, Andrew Baros advised that he was satisfied with the outcome and felt as if Brandenburg was trying to do the right thing, especially since the money came from Koch's trust fund. It is important to note that Andrew Baros never told Det. Nix that he or Victoria felt intimidated or threatened by Brandenburg. Andrew Baros also makes it clear that Brandenburg never asked him not to pursue charges against Koch.

2. Evidence does not support a charge that Kari Brandenburg bribed Ryan Sena and/or Shane Anaya:

The State cannot prove that Brandenburg committed a violation of Section 30-24-3 under subsections (A)(2) (intimidation or threat) or (B) (retaliation). Under Section 30-24-3(A)(2), there was no evidence presented that Brandenburg intimidated or threatened either Ryan Sena or Shane Anaya. Again, based on information provided and made public by APD, the alleged burglary occurred June 28, 2013 at the home of Sena and Anaya. The evidence presented from APD showed Facebook messages exchanged between Sena and Brandenburg, which were initiated by Sena on July 18, 2013 and continued through September 6, 2013. The Facebook messages portray a series of friendly messages between Brandenburg and Sena. In a message exchanged on July 19, 2013, Brandenburg told Sena to let her know the value of the stolen items and that she would "try to work on it." Based on the content of all the documented communications, it appears that Sena and Anaya submitted a list of items to Brandenburg because they wanted to get reimbursed, not because they were threatened or intimidated to do so. Additionally, the State cannot prove a violation of Section 30-24-3(B) because there was no evidence presented that Brandenburg retaliated against Sena or Anaya.

This left the State with the final option of determining if charges were appropriate under Section 30-24-3(A)(3). Under this Section, the State would have had to show that Brandenburg intimidated or threatened any person (Sena or Anaya) or gave or offered to give anything of value to any person (Sena or Anaya) with the intent to keep them from truthfully reporting to a law enforcement officer, or any agency of government that is responsible for enforcing criminal laws, information relating to the commission or possible commission of a felony offense. As there was not any evidence that

Brandenburg intimidated or threatened either Sena or Anaya, the State would have had to prove that Brandenburg bribed them by offering to reimburse them for their stolen items with the intent to keep them from truthfully reporting to a law enforcement officer information relating to the felony of residential burglary allegedly committed by Koch.

According to Sena, shortly after the burglary, Brandenburg contacted him from a blocked number, and told him that if he didn't call the cops she would reimburse him for the stolen items. The only evidence presented to support this claim is the statements made by Sena and Anaya. The State has not been provided with any corroborating evidence. There are no phone records to show how many times Brandenburg contacted Sena and when those calls may have occurred. In fact, there are no phone records to confirm that Brandenburg called Sena. Sena provided APD with the cell phone he claimed was used to communicate with Brandenburg. However, an analysis of data retrieved from the cell phone, only served to contradict Sena's statement that this phone was used to communicate with Brandenburg, as the last communication documented on the cell phone occurred on October 20, 2012, eight months prior to the alleged burglary.

After a review of the Facebook pages provided by Det. David Nix, there was no evidence that Brandenburg messaged Sena and told him not to call the police, to give untruthful information to the police, or that she asked him not to prosecute Koch in regards to the burglary committed at his home. The content of the messages appears to be friendly and centered on Koch and his well-being. The majority of the communication is either about locating Koch or Koch's new job. The first communication about being reimbursed occurred on July 19, 2013, when Brandenburg told Sena, "Let me know the value of the things stolen and I will try to work on it." The next communication referencing reimbursement did not occur until September 6, 2013, when Sena asked Brandenburg when he could drop the list off to her. There were no Facebook messages provided that show Brandenburg requested anything in return. Specifically, there were no messages that discussed not calling the police or not prosecuting Koch or other messages documenting bribery.

The only evidence presented to support the claim of bribery was Sena's and Anaya's statements to Det. David Nix. Sena stated, "She [Brandenburg] asked if I had called the police yet. I told her just to dust for prints. She then said if I don't call police she would reimburse us for what was taken. So I agreed and did not press charges." Shane stated, "Kari also contacted Ryan Sena asking us not to press charges and that she would pay us for the amount of everything Justin took." Sena's statement posed two issues: (1) Sena and Anaya had in fact already called the police and Brandenburg knew that; and (2) there is no corroborating evidence that Brandenburg told them not to give information to law enforcement or not to prosecute Koch. The evidence showed that Sena and Anaya immediately reported the burglary and named Koch as the suspect. The evidence showed that later, Brandenburg offered to try to reimburse Sena and Anaya. Sena and Anaya willingly agreed to get a list of stolen items to Brandenburg. There wasn't any evidence to support that they refrained from following up with law enforcement or that they informed law enforcement that they didn't want to prosecute. Lastly, the evidence showed that when Brandenburg informed

Sena she wasn't going to reimburse them, Sena became frustrated and described it as, "we were left screwed."

Additional interviews conducted by the OAG did not provide evidence to support charging in this matter and in fact, only provided information which corroborated that Brandenburg did not attempt to bribe Andrew Baros or Sena and Anaya. As charges in this matter would hinge on the statements made by Sena and Anaya, the State had to consider credibility issues. The investigation conducted by the OAG raised serious credibility issues relating to Sena.

As you are likely aware, the State's burden at trial is not simply probable cause. We must prove the charges beyond a reasonable doubt. The State cannot move forward with charging Brandenburg with bribery under Section 30-24-3(A)(3) based on the statements of Sena and/or Anaya without any corroborating evidence of Brandenburg's intent to commit bribery.

Issues Raised:

1. Actions by APD

Although we have concluded that the facts and evidence available to us at this time do not support filing criminal charges against Brandenburg, we have concerns about actions taken by APD that have complicated further investigation and prosecution in this matter. According to Det. David Nix's report, no further investigation occurred in the Brandenburg matter after July 28, 2014. Although evidence existed to support charges against Koch for crimes alleged to have occurred in July of 2013, that case sat without any referral or attempt to move forward with charges against Koch. The OAG investigation concluded that there was initially a conscious decision by APD to wait until January of 2015 to refer the Brandenburg matter to the Office of the Attorney General, based solely on a political motivation. Based on our investigation, we conclude there was no legitimate justification for delaying action on the Koch case. It would have been possible for your agency to separate the investigation into possible bribery by Brandenburg from the investigation into the illegal acts alleged to have been committed by Koch to ensure that justice was achieved in that case.

APD's own analysis of the evidence in this matter leads us to conclude that the decision to delay was based on political reasons unrelated to the alleged conduct of Koch or Brandenburg. The October 17, 2013 recorded conversation between Det. Nix and Sgt. Erikson includes this exchange:

Sgt. Erikson: "Yeah, I don't know, it's weird. It kind of reminds me of that big Murdoch case. Where it's like..."

Det. Nix: "I know man."

Sgt. Erikson: "...there might be charges, they're super weak, probably not gonna go anywhere, but it's gonna destroy a career."

Further, referencing the interview of Sena, Sgt. Erikson asks Det. Nix, “Who are we trying to get here? Kari or Justin?” To which Det. Nix replied, “Justin.”

Although APD completed the work on the Brandenburg matter on July 28, 2014 and, as described above, APD’s initial decision to wait until January 01, 2015 to refer it to the OAG, APD ultimately turned the investigation over soon after Brandenburg notified the lawyers for Keith Sandy and Dominique Perez that she was going to charge their clients with an open count of murder in October of 2014. Det. David Nix’s report was signed and dated November 21, 2014 and was officially turned over to the OAG on or about November 25, 2014. The timing of APD’s decision to turn over its investigation to the OAG raises questions about APD’s motivations, not only when deciding when to refer the matter to the OAG, but also when deciding to pursue an investigation against Brandenburg in the first place. These questions clearly impact further investigation and prosecution considerations, as these actions would undoubtedly be raised at trial.

Immediately after referring this matter to the OAG, APD made the entire case file available to the public with only minimal redaction of personal identifiers, leaving all substantive content available to the public. Although APD intended to refer this matter to the OAG for further investigation and possible prosecution, this full public release was done without consulting our agency and the OAG was left to interview additional witnesses who had already had opportunity to review all of the evidence and statements made by other witnesses. This release of information without any assessment of the necessity to redact protected information negatively affected the OAG’s ability to fully investigate and consider charges in this matter.

2. Actions by Kari Brandenburg

Also of concern in this matter were the actions taken by Second Judicial District Attorney Kari Brandenburg. While her conduct did not rise to the level of being criminal, her lack of disclosure and actions of personally engaging with potential witnesses and alleged victims clearly created an appearance of impropriety. Upon learning of a criminal investigation involving her son within her jurisdiction, District Attorney Brandenburg should have immediately arranged for a special prosecutor and refrained from personally engaging potential witnesses and alleged victims in this matter involving her son. She also should have notified the Albuquerque Police Department that she was aware of the investigation, and that she had made arrangements for a special prosecutor. District Attorney Brandenburg’s position as chief prosecutor and law enforcement official for the Second Judicial District requires she avoid all appearances of impropriety.

I hope this letter serves as an opportunity to ensure that these deficiencies are addressed within your Department. As mentioned previously, jurisdiction over offenses allegedly committed by Koch remains with the local district attorney. It is recommended that your agency make a proper referral of those matters to the local district attorney’s office, so that they can be formally declined and a special prosecutor selected. The OAG stands ready to assist you at any time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hector Balderas". The signature is stylized and cursive.

Hector Balderas
New Mexico Attorney General