

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

**DEFENDANT ALEC BALDWIN'S MOTION TO DISMISS THE INDICTMENT WITH PREJUDICE
BASED ON THE STATE'S DESTRUCTION OF EVIDENCE**

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PRELIMINARY STATEMENT

The government took the most critical evidence in this case—the firearm—and *destroyed* it by repeatedly and pointlessly striking it with a mallet. Government agents knew that the firearm would not survive their clumsy “tests” intact. They said so explicitly in emails. But at the insistence of prosecutors eager to prove a celebrity’s guilt, they nevertheless blundered ahead without preserving the original state of the firearm through photographs, video, or other means; without informing Baldwin or his counsel they were conducting destructive testing; and without any realistic prospect that bludgeoning the gun would reveal whether Baldwin had pulled the trigger on the day of the accident.

Under time-honored principles of due process, the charges must be dismissed. The law is clear: the government may not knowingly deprive the defense of potentially useful evidence by destroying it. Indeed, even where the government acts with mere negligence—let alone the intentional ineptitude on display here—the destruction of apparently exculpatory evidence violates due process. It is difficult to find a reported decision with a more egregious constellation of facts: premeditated destruction of the key evidence by government agents for no justifiable reason, at the insistence of prosecutors determined to prove Baldwin’s guilt, and without even the most rudimentary efforts to document the original condition of that evidence.

The Court should dismiss this prosecution with prejudice.

FACTUAL BACKGROUND

For purposes of the present motion, six indisputable facts are critical:

First, the allegation that Baldwin pulled the trigger of the firearm is important to the prosecution’s theory of the case. The prosecution confirmed that fact most recently in its opposition to Baldwin’s motion to dismiss the indictment, writing that “[t]he reason Baldwin’s behavior was a violation of the law is because he pointed a gun at a person, cocked it *and pulled*

the trigger having no personal knowledge [of] what type of ammunition was in the gun.” State’s Response to Defendant’s Motion to Dismiss the Indictment (Apr. 5, 2024) (“MTD Opp.”) at 30 (emphasis added). Moreover, government agents understood in real time that they were testing the firearm because prosecutors wanted to disprove Baldwin’s statements that he had not pulled the trigger—as revealed through testimony in Hannah Gutierrez-Reed’s trial. Ex. A¹ (Gutierrez-Reed Trial (“HGR Trial”), Transcript of 2/27/24 Proceedings (“Day 4”)) at 146:2-9 (A. Hancock).

Second, government agents destroyed the firearm. They did so by repeatedly striking it with a mallet until multiple internal parts shattered. The testing so thoroughly demolished the gun that to perform later testing, the government’s hired experts were required to replace the trigger, bolt, and sear—the same parts critical to understanding whether the gun could accidentally discharge.

Third, the government knew in advance that the testing would destroy the firearm—as documented in a contemporaneous email exchange between the FBI and the Santa Fe Sheriff’s Office (“SFSO”).

Fourth, the government did not take even the most basic measures to document the condition of the firearm before destroying it, such as photographing or visually inspecting and documenting the condition of the internal components; did not inform Baldwin of their plans to conduct destructive testing; and did not record the testing.

Fifth, the parts of the firearm that prevent discharge without a pull of the trigger—the hammer and the sear—both have telltale signs that they were modified from factory settings. Critically, the full-cock notch of the hammer is almost completely gone, and the sear appears to

¹ All exhibits not previously attached to filings in this proceeding are attached to the affidavit of Sara Clark (“Clark Aff.”) filed concurrently with this motion.

have been filed. Those two parts are primarily what prevents a gun from firing when the hammer is released after cocking. The surviving evidence shows that those parts were smoothed and rounded and show file marks—none of which is consistent with damage caused by a mallet.

Finally, the prosecution asserts, as evidence of Baldwin’s guilt, that “no evidence” exists that the hammer was defective before the government destroyed the gun. MTD Opp. at 26-27. But the asserted lack of evidence is *the government’s own fault*.

For the following reasons, those facts cannot reasonably be disputed, and they demand that this case be dismissed.

A. The Tragic Accident

This Court is familiar with the tragic events of October 21, 2021, on the set of *Rust*. Although some of those events may be subject to conflicting witness accounts, the key fact for the purpose of this motion is undisputed: no blunt force impacted the firearm at the moment it fired (or at any point in the hours leading up to the accident). The firearm did not smack against any hard surface, and no object struck it.

Before lunch on the day of the accident, the cast and crew had filmed several shots of Baldwin sitting in a pew in the church, where, according to the script, his injured character was waiting for the arrival of two lawmen who would try to take him into custody. The last scene filmed saw Baldwin’s character draw his revolver from its holster and point it toward the entrance of the church.

The crew broke for lunch at 12:30, and the armorer, Hannah Gutierrez-Reed, took possession of the firearm. *See* Ex. B (Excerpt of 10/26/22 SFSO Report) at 191. Accounts of where the gun was stored during lunch differ, but they all indicate that after lunch Gutierrez-Reed brought the firearm back to the set where she eventually loaded it with what were supposed to be six inert dummy rounds. *See id.* at 3; *see also* Ex. C (HGR Trial, Transcript of 2/29/24 Proceedings

(“Day 6”) at 173:18-174:4, 176:4-12 (D. Halls); *id.* at 262:15-263:2, 264:2-21 (S. Zachry). Gutierrez-Reed and the First Assistant Director, David Halls, performed a check of the firearm (which they later admitted was inadequate), and someone called out “cold gun” to the cast and crew on set. Ex. C (HGR Trial, Day 6) at 178:10-24, 216:14-25, 218:16-219:7; 220:14-17 (D. Halls); Ex. D (HGR Trial, Transcript of 3/6/24 Proceedings (“Day 10”)) at 77:19-23, 119:6-9 (K. Morrissey); Ex. E (HGR Trial, Transcript of 2/26/24 Proceedings (“Day 3”)) at 204:9-17 (R. Addiego). The firearm was then handed to Baldwin. Ex. F (HGR Trial, Transcript of 2/22/24 Proceedings (“Day 1”)) at 23:16-24:4 (J. Lewis); Ex. E (HGR Trial, Day 3) at 205:6-10 (R. Addiego).

While Baldwin was rehearsing his movement for the camera, the gun discharged. Immediately after the discharge, Halls took the firearm to Gutierrez-Reed, and the two unloaded it. They identified several inert dummy rounds and one expended cartridge of a live round. The witness testimony about these events has been consistent in the following important respects: (i) Gutierrez-Reed loaded the revolver; (ii) Baldwin received what he was told was a “cold” firearm; (iii) Baldwin was rehearsing his movement for the camera with Hutchins and Souza in front of him behind the camera; and (iv) the firearm discharged while Baldwin was holding it. Critically, no witness has ever suggested that the firearm was hit or suffered external impact.

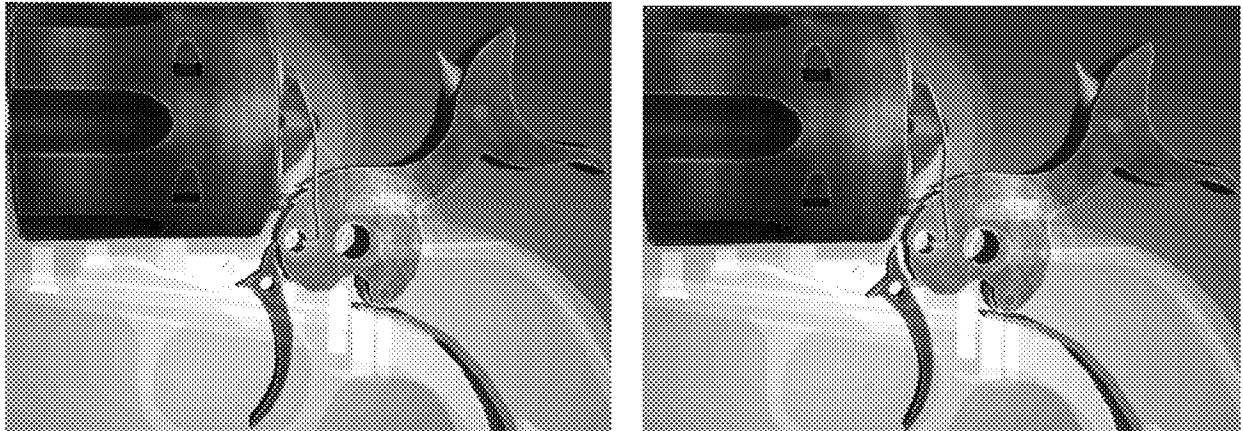
B. The Firearm

The firearm that discharged the fatal round is a “facsimile of the Colt 1873 single-action . . . revolver chambered for the .45 Colt cartridge.” Ex. G (8/2/23 Report of Lucien C. Haag (“Haag Report”)) at 3. It was manufactured by an Italian firm and imported by a California company, who provided it to the production’s firearms vendor approximately one month before the accident. *See*

Transcript of 1/18/24 Grand Jury Proceeding (“GJ (Day 1)”)² at 119:12-17 (L. Haag); Ex. H (ATF Trace Report).

As the State’s experts explained, the firearm was designed to function the same way as most other single-action revolvers. It has a cylinder that can hold six rounds. To discharge a round, the user must first manually cock the gun by pulling the hammer back to the “full-cock” position. When the hammer is pulled back to the full-cock position, two things happen. First, the cylinder rotates to align the next round with the barrel and the firing pin (which sits at the front of the hammer). Second, the top part of the trigger, called the sear, catches on a notch on the bottom of the hammer—the “full-cock notch.” The sear prevents the hammer from falling forward until the trigger is pulled. Pulling the trigger disengages the sear, which then releases the hammer, causing it to fall forward and the firing pin to slam into the primer (a small explosive cap at the base of the round). The impact of the firing pin on the primer detonates the primer, which ignites the gunpowder in the cartridge. The ignition of the gunpowder builds high-pressure gas, which forces the bullet at the top of the round to detach from the casing and exit through the barrel of the revolver. *See* GJ (Day 1) at 121-129 (L. Haag); Ex. I (Grand Jury Ex. 31, (“Haag Animation”)); Ex. A (HGR Tr., Day 4) at 72:11-74:15.

² Transcripts of the January 18, 2024 (“GJ (Day 1)”) and January 19, 2024 (“GJ (Day 2)”) grand jury proceedings were submitted under seal as Exhibits 19 and 20, respectively, with Baldwin’s Motion to Dismiss the Indictment (Mar. 14, 2024).



Stills from Haag Animation (Ex. I) showing the interaction of the hammer and trigger sear with the hammer pulled back, and the sear releasing when the trigger is pulled back. The half- and quarter-cock notches are also visible.

Two other features of the firearm are relevant here. First, the hammer also contains two other notches: the half-cock notch and the quarter-cock notch. Those notches are designed to capture the sear if the user releases the hammer once it has been pulled back past those notches, but before it reaches the full-cock position, preventing the firearm from firing. GJ (Day 1) at 128:12-129:17 (J. Lewis). Second, if a user decides not to fire the weapon and wants to release the hammer back to its resting position, the user must first hold the hammer back with the thumb, apply pressure to the trigger to move the sear out of the way, and slowly lower the hammer back down, as the State's expert demonstrated at the Gutierrez-Reed Trial. Ex. A (HGR Trial, Day 4) at 74:1-15; Haag Animation (Ex. I).

As described below, the critical parts of the firearm that were designed to prevent an accidental discharge—the full-cock notch, half-cock notch, quarter-cock notch, and sear—all show signs of modification that would make an accidental discharge more likely. As the State's experts found, the broken hammer did not retain a fully intact replacement sear, causing the hammer to fall forward. Ex. J (8/26/23 Supplemental Report of Lucien C. Haag ("Supp. Haag Report")) at 2

(describing testing conducted with a replacement sear and bolt, but using the original hammer).³

The government implausibly attributes these changes solely to its own inept testing, asserting that the government caused these changes by striking the gun with a mallet.

C. The Government's Intentional Destruction Of The Firearm

After the accident, police officers took possession of the cleared revolver. Detectives Alexandria Hancock and Samantha Talamante interviewed Baldwin, Halls, Gutierrez-Reed, and others over the course of several days. Baldwin sat for an interview the day of the accident.

In April 2022, fully six months after the incident occurred, the SFSO requested that the FBI test the revolver. Ex. K (04/21/22 Cortez Email Chain (“Email Chain”)) at 3-4. The SFSO’s explicit purpose in doing so was to prove that Baldwin had pulled the trigger, which remains contested. As Corporal Alexandria Hancock, the SFSO’s lead investigator, testified at Gutierrez-Reed’s trial, “[w]e proceeded with the testing because Baldwin had made statements that he didn’t pull the trigger. . . [s]o we needed to figure out how to *disprove that theory or that statement*, and that was the way that was proposed to us and what the FBI could do.” Ex. A (HGR Trial, Day 4) at 146:2-9 (A. Hancock) (emphasis added).

The SFSO decided what type of testing would be performed on the firearm. On April 21, 2022, FBI Special Agent Jose Cortez, at the instruction of Corporal Hancock, directed the FBI to perform an “[e]nhanced test” to determine whether the firearm would fire without pressing the trigger. Ex. K (Email Chain) at 3. This “accidental discharge” testing is designed to determine whether a firearm will fire if jostled or impacted—neither circumstance at issue here—and involves striking the firearm on all planes with a rawhide mallet. Ex. E (HGR Tr., Day 3) at

³ The State has not conducted testing using the broken sear. This makes sense because, following the destruction of the sear by the FBI, it is impossible to know the condition of the sear—a critical part of the firearm—before that testing.

27:19-28:17) (B. Ziegler). This rough testing is known to damage firearms. *Id.* at 28:18-29:9 (B. Ziegler). Special Agent Cortez wrote that he and the SFSO (*i.e.*, Hancock) were “tracking that the requested testing *will* alter the firearm and it *will no longer be in the same physical condition* that it was seized in” following the testing. Ex. K (Email Chain) at 3 (emphases added).

As the FBI knew and told the SFSO, this testing subjects the firearm to a substantial external impact and was all but certain to cause it to break. *See* Ex. K (Email Chain) at 3 (“We’re tracking that this *will* alter the firearm and it will not longer [*sic*] be in the same physical condition that it was seized in”) (emphasis added). Notwithstanding the known fact that the firearm would be forever transformed, no one in the prosecutor’s office, at the SFSO, or at the FBI asked that the FBI lab document the internal components of the firearm before performing the destructive testing. Nor did anyone alert Baldwin or the other eventual defendants to the possibility that a key item of evidence was about to be destroyed. Notably, by that point the FBI had already classified Baldwin (among others) as a “person of interest” in the FBI Report, and the entire purpose of the testing was to determine whether he had pulled the trigger.⁴ *See* Defendant Alec Baldwin’s Motion to Dismiss the Indictment (Mar. 14, 2024), Ex. 30 (“FBI Report”) at 72, 76.

FBI Forensic examiner Bryce Ziegler conducted extremely aggressive testing on the revolver, striking it repeatedly with a mallet (without documenting in any way, nor endeavoring to hold constant, the force with which he struck it). Ex. E (HGR Trial, Day 3) at 28:18-32:4, 70:9-71:3 (Ziegler testifying that he did not have any way to know how hard he hit the revolver in testing); Ex. A (HGR Trial, Day 4) at 82:14-16 (State describing the testing as “aggressive”). Stuningly, Ziegler has admitted that he had *never* previously conducted this type of testing

⁴ The only other “persons of interest” identified throughout the report are David Halls, Sarah Zachry, and Hannah Gutierrez-Reed—the people the SFSO eventually prosecuted or, in the case of Zachry, to whom prosecutors offered a non-prosecution agreement.

outside of a training environment. Ex. E (HGR Trial, Day 3) at 67:7-21 (B. Ziegler). That inexperience manifested itself with disastrous results. Ziegler failed to disassemble the firearm before testing it to look for worn, altered, or otherwise defective parts. Ziegler failed to adapt the test to the circumstances of the incident. Instead, Ziegler immediately began beating the firearm from all directions with a mallet until the trigger and other internal components broke. That testing made no sense in the context of the broader investigation.⁵ The SFSO asked to test whether the firearm could fire without a pull of the trigger. But there was never a suggestion that substantial impact occurred that would justify the kind of testing that Ziegler performed. As the State’s expert explained in his pre-trial interview in this case, destructive testing was not called for in this case. Clark Aff. ¶ 16. Rather, at least one appropriate test—which is now impossible to perform—would have been a “push-off” test, in which pressure is manually applied to the back of the hammer to determine if it will fall without a trigger pull. Clark Aff. ¶ 16; *see also* Ex. G (Haag Report) at 5 (discussing not observing “push-off” of the replacement hammer when tested with other replacement parts).

Ziegler inexplicably waited until *after* conducting the destructive testing to do what he should have done before anything else: take the firearm apart to examine it for modification or damage. Ex. E (HGR Trial, Day 3) at 62:18-63:2 (B. Ziegler). When he finally did so, he found internal components that showed clear signs of modification. While some parts exhibited damage consistent with the mallet strikes, other parts showed unrelated alterations and damage. For example, the hammer had been rounded such that the sear would no longer stay lodged in the full-

⁵ Ziegler explained in his testimony that firearms examiners should try to replicate the circumstances in question when conducting drop testing. *See* Ex. E (HGR Trial, Day 3) at 64:25-65:22; 68:8-69:19 (B. Ziegler). The government failed to take the relevant circumstances into account here.

cock notch, and other notches (quarter and half) also appear reduced in depth when compared to intact parts. Ex. L (HGR Trial Exs. 97A, 138, 139) at 1-3; Ex. M (Grand Jury Ex. 38) (showing reduced depth of quarter- and half-cock notches on the evidence hammer alongside unmodified, intact sample hammers provided by the State's experts). Moreover, the hammer and sear were a shiny silver and had evidence of toolmarks. Ex. L (HGR Tr. Exs. 97A and 130) at 1, 4. The State's own expert admitted these facts, describing the hammer as "peened" or "rolled, rounded off, and [] full of very rough toolmarks." Ex. A (HGR Trial, Day 4) at 77:13-18 (L. Haag).⁶ As the State's experts demonstrated, the hammer would not engage an intact sear in that condition, which would have allowed the hammer to fall without pulling the trigger. Ex. J (Supp. Haag Report) at 2.

D. The Effect Of The Government's Destruction Of The Firearm

The effect of the government's destructive testing was to damage several of the firearm's internal components, rendering it inoperable. But because the FBI failed to examine those components before testing or documenting the firearm's original condition, it is impossible for the defense to conclusively reconstruct the firearm. That gap in the evidentiary record prevents the defense from recreating the FBI's tests, conducting its own tests on a functioning firearm in its original condition, inspecting the firearm in its original condition, evaluating the modifications and their effect before the gun was destroyed, or otherwise subjecting the FBI's analysis to the rigorous review necessary for a proper defense against the indictment.

Later testing by the State's expert only underscores the problem. The State's expert admitted that the firearm was not functional when he received it from the Special Prosecutors. Ex.

⁶ Lucien Haag later said that the hammer was "shaved off" during testing, Ex. A (HGR Trial, Day 4) at 82:14-16 (L. Haag), but admitted in his pre-trial interview in this case that he had never seen such a piece of broken or shaved off metal attributed to the hammer of the evidence revolver (Clark Aff. ¶ 16).

G (Haag Report) at 3; Ex. J (Supp. Haag Report) at 2. He therefore reconstructed the firearm using the damaged hammer, but otherwise replaced the parts that the FBI had identified with new parts. Ex. J (Supp. Haag Report) at 2; Ex. A (HGR Trial, Day 4) at 92:17-23, 93:2-7, 94:8-24 (L. Haag). That testing failed to take into account any pre-existing damage or modifications to those substituted parts. It would be like investigating whether a car malfunctioned in a crash only after replacing the brakes and engine.

The government cannot correct that fundamental error. The FBI's failure to document the firearm's original condition before conducting destructive testing, and the SFSO's failure to ask for it, has deprived the defense of critical information that would allow Baldwin's counsel to test a core component of the prosecution's theory and his defense: whether the firearm was defective when the accident occurred and could have discharged a round without a pull of the trigger.

SUMMARY OF ARGUMENT

The Court should dismiss the indictment with prejudice because the government committed an egregious violation of due process and New Mexico law by destroying central evidence in the case—the firearm—without giving the defendant an opportunity to examine it or even documenting its original condition. There is a strong basis to believe that, before the accident, the sear and hammer had been modified, making an accidental discharge more likely. But the government's actions have made it impossible for Baldwin to establish the firearm's condition on the day of the accident and prevented his counsel from conducting appropriate tests to determine whether those modifications, individually or together, could have allowed the gun to discharge without the pull of a trigger. In the alternative, if the Court deems dismissal unwarranted, it should preclude the government from presenting argument or evidence that Baldwin pulled the trigger and should instruct the jury that he did not do so.

The government's destruction of the firearm without documenting its original condition or allowing Baldwin's counsel to do so violated Baldwin's federal due process rights. The government's destruction of evidence implicates two federal due process safeguards. First, under *California v. Trombetta*, 467 U.S. 479 (1984), the government violates due process if it destroys evidence that "possess[es] an exculpatory value that was apparent before the evidence was destroyed, and [is] of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." *Id.* at 489. Second, under *Arizona v. Youngblood*, 488 U.S. 51 (1988), the government may not in bad faith destroy evidence that is "*potentially* useful," even if the evidence is not apparently exculpatory. *Id.* at 58 (emphasis added). The government's intentional actions here violated both standards.

Under *Trombetta*, the firearm had exculpatory value that was apparent before it was destroyed. As shown by contemporaneous documents, prosecutors, the SFSO, and the FBI all understood before the testing that any internal defects would tend to exonerate Baldwin by establishing that he did not pull the trigger. And there were compelling reasons to believe that such defects existed: the hammer and sear displayed telltale signs that someone had modified them. In those circumstances, it was outrageous and improper for the government to fail to carefully document the firearm's original condition, including its internal components, or to offer Baldwin an opportunity to do so, before conducting tests that the agents involved knew would destroy the firearm and make it impossible to prove its original state with certainty.

The government's intentional destruction of the firearm also violates New Mexico law. Under New Mexico Supreme Court precedent, courts examine three factors to determine whether the government's destruction of evidence violated the defendant's rights: whether the state either breached some duty or intentionally deprived the defendant of evidence; whether the evidence was

material; and whether its destruction prejudiced the defendant. Under that standard, the government's good faith is irrelevant if the evidence was material and its loss prejudicial.

Those New Mexico standards are easily met here. There can be no dispute that the government intentionally destroyed the firearm; agents said as much over email. The original condition of the firearm is highly material to Baldwin's defense. And his inability to prove the original state of the firearm or to subject the firearm to testing in its original state severely prejudices his defense. The government's conduct therefore violated New Mexico law.

The appropriate remedy for the government's egregious violation of Baldwin's rights under the U.S. Constitution and New Mexico law is to dismiss the charge against Baldwin with prejudice. At this point there is no way to unscramble the egg. The government's inexplicable actions have deprived Baldwin of the opportunity to establish the original condition of the firearm's internal components and to test the firearm in that original state. In these circumstances, prosecuting him based on a theory that he pulled the trigger (a claim essential to the government's theory of the case) would deny him a fair trial. As does denying Baldwin the opportunity to defend the case on the basis that the firearm discharged without a pull of the trigger. There is no remedy short of dismissal that can preserve Baldwin's rights. At a minimum, the Court should bar the government from presenting any evidence or argument that Baldwin pulled the trigger and should instruct the jury that it must presume he did not do so—an instruction that should yield a defense verdict as a matter of law based on principles of intervening cause and the absence of *mens rea*.

ARGUMENT

The government violated Baldwin's rights under both the Due Process Clause and New Mexico law by destroying the firearm without documenting the original condition of its internal components. The only fair remedy for that egregious violation is to dismiss this prosecution with prejudice. The government's theory of the case depends, at least in part, on its allegation that

Baldwin must have pulled the trigger. *See* MTD Opp. at 10-11, 17; *id.* at 30 (“The reason Baldwin’s behavior was a violation of the law is because he pointed a gun at a person, cocked it and pulled the trigger having no personal knowledge what type of ammunition was in the gun.”). But Baldwin will never have a full and fair opportunity to rebut that allegation because of the government’s destruction of key evidence.

Through its relentless and myopic quest to prosecute a celebrity for a tragic accident, the government has violated the federal and New Mexico Constitutions and the state-law rules governing criminal prosecutions and has made it impossible for Baldwin to mount the robust defense he’s entitled to present. The Court should dismiss the case with prejudice.

I. THE GOVERNMENT’S DESTRUCTION OF THE FIREARM VIOLATED DUE PROCESS

The Due Process Clause of the Fourteenth Amendment imposes two separate standards protecting criminal defendants from the government’s destruction of evidence. First, under *California v. Trombetta*, 467 U.S. 479 (1984), the government violates due process if it destroys evidence that “possess[es] an exculpatory value that was apparent before the evidence was destroyed, and [is] of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.” *Id.* at 489. Second, under *Arizona v. Youngblood*, 488 U.S. 51 (1988), the government violates due process when it acts in “bad faith” and “fail[s] to preserve potentially useful evidence.” *Id.* at 58.

The Tenth Circuit and other federal courts of appeals have explained that these are distinct standards. “To invoke *Trombetta*,” the Tenth Circuit has explained, “a defendant must demonstrate that the government destroyed evidence possessing an ‘apparent’ exculpatory value.” *United States v. Bohl*, 25 F.3d 904, 910 (10th Cir. 1994) (quoting *Trombetta*, 467 U.S. at 489). But “to trigger the *Youngblood* test, all that need be shown is that the government destroyed ‘potentially useful evidence,’” meaning “evidence of which ‘no more can be said than that it could

have been subjected to tests, the results of which *might* have exonerated the defendant.” *Id.* (quoting *Youngblood*, 488 U.S. at 57, 58) (emphasis added). Unlike *Trombetta*, the *Youngblood* standard requires a showing that the government acted in bad faith. *See Olszewski v. Spencer*, 466 F.3d 47, 56 (1st Cir. 2006) (“A variety of other circuits have considered the relationship between *Trombetta* and *Youngblood* and have concluded that (1) the destruction of ‘apparently exculpatory’ evidence does not require a showing of bad faith but that (2) if the evidence is only ‘potentially useful,’ a bad-faith showing is required.”).

Here, both of these distinct standards are met, and each independently requires dismissal of the prosecution. Under *Trombetta*, the firearm had “apparently exculpatory” value because its hammer had been rounded off such that the full-cock notch no longer caught, other stop notches appeared to be reduced in depth, and the silver sheen and toolmarks on the hammer and sear indicate modification of internal components—all of which would have made it more likely that the gun would go off when Baldwin released the hammer. But as a result of its destruction, Baldwin is now unable to prove definitively that its parts had been modified before the FBI testing, and his experts will never be able to conduct appropriate testing on the firearm in its original state to establish that it could discharge when the hammer was manipulated. No comparable evidence can recreate the original state of the gun.

Under the separate *Youngblood* standard, the intact firearm, at a minimum, would have been “potentially useful” to the defense, and the government acted in bad faith. Law-enforcement agents knew that the firearm was central to the case, knew that prosecutors had requested the testing to prove that Baldwin had pulled the trigger, and knew that the testing would destroy the firearm. Yet they failed to analyze or document its original condition or even inform Baldwin about their plans to conduct destructive testing. Indeed, it is hard to find a more egregious example

of the government ignoring the rights of a criminal defendant by permanently altering the most important evidence in the case.

A. The *Trombetta* Standard Is Met

The undisputed facts in this case establish that the *Trombetta* standard is met because the government destroyed critical evidence that had apparent (indeed, obvious) exculpatory value, and there is no way for Baldwin's experts to test the firearm in its original condition.

Apparently Exculpatory Value. The firearm had exculpatory value that would have been apparent to any law-enforcement official from the moment of the accident.

As an initial matter, the government cannot dispute that the firearm is central to this case. From the day of the accident, Baldwin has steadfastly denied pulling the trigger both in interviews with law enforcement and in public statements. But the government has built its case around the claim that he did. The government's expert, Lucien Haag, wrote in his report (despite never having examined the intact firearm) that "[a]lthough Alec Baldwin repeatedly denies pulling the trigger, given the tests, findings and observations reported here, the trigger had to be pulled or depressed sufficiently to release the fully cocked or retracted hammer of the evidence revolver." Ex. G (Haag Report) at 27. His son said the same thing in his grand jury testimony. GJ (Day 1) at 129:16-130:11 (M. Haag). Indeed, prosecutors gratuitously accused Baldwin of lying about not pulling the trigger during their summation in Gutierrez-Reed's trial. Ex. D (HGR Trial, Day 10) at 77:15-19 (K. Morrissey).

It was also apparent immediately that the firearm could tend to disprove guilt. *Bohl*, 25 F.3d at 910. The State does not dispute that other accidental discharges occurred on set and cannot dispute that several witnesses reported to the SFSO that the gun just "went off." Ex. N (Excerpt of SFSO Report) at 118 (R. Addiego); *id.* at 119 (T. Gandy); *id.* at 120 (K. Keuhn); *id.* at 122 (D. Curtin); *id.* at 123 (R. Price); *id.* at 124 (R. Gandy). The entire purpose of requesting testing of the

firearm was to determine if, in fact, it could have malfunctioned on the day of the incident. This potential exculpatory element is precisely what the State was testing, and it cannot possibly assert it was unaware of this value when it authorized and conducted destructive testing.

Under settled precedent, these facts are more than sufficient to meet the “apparently exculpatory” standard. First, in far less egregious examples than this, courts have concluded that when government agents had been told the evidence was exculpatory before they destroyed it—as here, where Baldwin repeatedly said and told law enforcement that the gun had gone off without his pulling the trigger—the “apparently exculpatory” standard is met. For example, *United States v. Cooper*, 983 F.2d 928 (9th Cir. 1993), involved lab equipment that prosecutors claimed had been used to manufacture methamphetamine. *Id.* at 929-30. Drug Enforcement Administration “agents repeatedly confronted claims that the equipment was specially configured for legitimate chemical processes and was structurally incapable of methamphetamine manufacture,” including in statements by the defendant’s “parole officer and the lab’s landlord.” *Id.* at 931. Based on those statements, the Ninth Circuit concluded that “[t]he equipment’s exculpatory value was apparent to government agents before they, in bad faith, allowed its destruction.” *Id.* Here, too, the government was on notice of Baldwin’s repeated statements that the firearm had discharged without a trigger pull, which were consistent with the statements of myriad witnesses from that day; indeed, the government specifically wanted to test the gun to disprove Baldwin’s statement. Yet investigators—both state and federal—took no action to examine and document the internal components before destroying the firearm.

Courts have likewise found that the *Trombetta* standard was met where the evidence in question was crucial to the case. *See, e.g., United States v. Belcher*, 762 F. Supp. 666, 673 (W.D. Va. 1991) (finding exculpatory nature of destroyed marijuana plants apparent, in part, because “the

very plants that the State officials destroyed will be the crucial item of evidence at trial”); *United States v. Soriano*, 401 F. Supp. 3d 396, 404 (E.D.N.Y. 2019) (same); *United States v. Dennison*, 2014 WL 7140044, at *7 (D. Utah Dec. 12, 2014) (same). Here, there is no doubt that the firearm is the most crucial piece of evidence in this case, and there is only *one* firearm at issue—the one the government irreparably damaged. The government has commissioned extensive expert analysis of the firearm, focused specifically on whether it could have discharged without pulling the trigger—a question that is central to the government’s theory of guilt. Yet the government has forever deprived Baldwin of a full and fair opportunity to evaluate that question using proper tests of the firearm in its original condition.

No Comparable Evidence. The second requirement under *Trombetta* is that “the defendant remains unable to ‘obtain comparable evidence by other reasonably available means.’” *Bohl*, 25 F.3d at 910 (quoting *Trombetta*, 467 U.S. at 489). That is true here for two reasons. First, and most clearly, the defense cannot conduct the type of testing that should be conducted on a firearm in these circumstances. Those tests include (1) functionality testing of the firearm in its original condition; (2) a detailed visual inspection, including an inspection of the firearm’s internal components; and (3) malfunction testing designed to replicate the circumstances of the accident (rather than the aggressive and destructive testing entirely divorced from the relevant circumstances that the government carried out)—for example, the push-off testing described by Lucien Haag in his pre-trial interview and alluded to in his report. Clark Aff. at ¶ 16; *see also* Ex. G (Haag Report) at 5 (discussing not observing “push-off” of the replacement hammer when tested with other replacement parts). That unfairly prevents the defense from presenting its most compelling case to the jury that Baldwin did not pull the trigger.

Second, the government has strenuously argued that the modifications of the parts (such as the rounding of the notches) were caused by its own tests. MTD Opp. at 17-18. That makes little sense: striking a firearm with a mallet would not necessarily have smoothly rounded the hammer, while shearing off other parts. The rounding remains unexplained by the State. Lucien Haag further conceded that had the hammer sheared off in testing (like the State claims), there should have been a corresponding metal fragment to align (as with the sear). But there isn't. Clark Aff. ¶ 16.

The fact that the government will not even concede that the firearm could have been modified in various material ways further underscores that access to the intact firearm is critical to Baldwin's defense: had the government at least documented the original condition of the internal parts before conducting its testing, Baldwin could have tested whether the parts had been modified in ways that made it easier for the firearm to accidentally discharge without the pull of the trigger. But the government denied Baldwin that opportunity.

In similar cases where the government has destroyed a crucial piece of evidence without documenting its original state, courts have readily found that the defendant lacked comparable evidence. For example, in *Soriano*, the Eastern District of New York explained that "an accurate assessment of the impact of the Government's inexplicable destruction of patently relevant evidence is not possible since the physical evidence is gone and there are no reliable substitutes given the Government's admitted *failure to document in any comprehensive form what was destroyed*." 401 F. Supp. 3d at 402-03 (emphasis added); *see also, e.g., Belcher*, 762 F. Supp. at 672 ("[T]he Belchers' alleged crimes concern formerly-distinct plants that no longer exist and that were never tested to determine what they were. The information those plants contained is lost forever and will never be available to the Belchers."); *State v. Blackwell*, 537 S.E.2d 457, 461 (Ga.

Ct. App. 2000) (“Blackwell cannot replicate the destroyed [urine] sample. . . . By destroying the sample, the State destroyed Blackwell’s ability to meet the prosecution’s proof with evidence of like quality.”). Here, there is simply no way for Baldwin to confirm with certainty that the firearm contained anomalous modifications or defects that could have allowed it to discharge by pulling back and releasing the hammer.

The Court should conclude that the *Trombetta* standard has been easily satisfied and dismiss the prosecution with prejudice.

B. The *Youngblood* Standard Is Also Met

The alternative *Youngblood* standard is also satisfied, providing an independent basis for dismissing the prosecution. That standard states that the government violates due process when the evidence at least would have been “potentially useful” to the defense, even if not apparently exculpatory, and the government acted in bad faith. *Bohl*, 25 F.3d at 910. Both elements are satisfied here.

“Potentially Useful” Evidence. For reasons explained above, *see supra* at 15-18, the firearm was apparently exculpatory evidence. At a bare minimum, the firearm was “potentially useful” to the defense. Indeed, even if the firearm had not displayed any indicia of the modifications described above, it would have been useful to the defense to be able to examine its components and to run non-destructive tests to establish that it *might* have discharged without the pull of the trigger—enough evidence for reasonable doubt. The fact that evidence of modifications *does* exist means that the “potentially useful” standard has been satisfied by a wide margin.

The precedent applying *Youngblood* makes clear that the standard sets a low bar. The Tenth Circuit has explained, for example, that defendants need only show “a reasonable possibility that further tests [of the destroyed evidence] *might* have produced material exonerating evidence.” *Bohl*, 25 F.3d at 910 (emphasis added). That can be true even where the “exculpatory value of the

evidence is *indeterminate*.” *United States v. Parker*, 72 F.3d 1444, 1451 (10th Cir. 1995) (quoting *Bohl*, 25 F.3d at 910) (emphasis added). The New Mexico Court of Appeals has likewise explained that the standard is met “where there is a *possibility* that the test results would have exonerated the defendant.” *State v. Watley*, 1989-NMCA-112, ¶ 11, 788 P.2d 375 (emphasis added); *see also Russell v. Watkins*, 112 F. App’x 721, 723 (10th Cir. 2004) (explaining that “potentially useful evidence” is evidence “of which no more can be said than that it could have been subjected to tests, the result of which might have exonerated the defendant”) (quoting *Youngblood*, 488 U.S. at 57). Thus, so long as “in theory the evidence had the *potential* to be useful to Defendant had it survived long enough to be tested by his expert,” it satisfies the first *Youngblood* criterion. *United States v. Byrdsong*, 2005 WL 8163832, at *3 (D.N.M. July 27, 2005).

That is clearly true here: had defense experts been able to test the firearm in its unaltered state, the firearm would at minimum have had the “potential” to exonerate Baldwin. The testing might have shown that the firearm was capable of firing without the pull of the trigger—a “potential” made all the more likely because the firearm’s internal components were modified. The first *Youngblood* factor is therefore satisfied.

Bad Faith. The government agents who requested and performed the FBI’s analysis of the firearm acted in bad faith. An “inquiry into bad faith ‘must necessarily turn on the [government’s] knowledge of the exculpatory value of the evidence at the time it was lost or destroyed.’” *Bohl*, 25 F.3d at 911 (quoting *Youngblood*, 488 U.S. at 57 n.*); *accord United States v. Zaragoza-Moreira*, 780 F.3d 971, 977-78 (9th Cir. 2015); *United States v. Wright*, 260 F.3d 568, 571 (6th Cir. 2001). The government need only be aware that the evidence was “potentially exculpatory.” *Bohl*, 25 F.3d at 911.

The evidence of bad faith here is overwhelming. *First*, the government—both the prosecutors and the law-enforcement agents—clearly understood that if the firearm could fire without pulling the trigger, that would confirm Baldwin’s statements and exculpate him even under the prosecution’s (erroneous) legal theories. As Corporal Hancock testified at trial, the entire purpose of the destructive testing was “to figure out how to disprove” Baldwin’s statement that he did not pull the trigger. Ex. A (HGR Trial, Day 4) at 146:2-9 (A. Hancock). The government therefore understood before destroying the firearm that the ability to examine and test the firearm in its original condition would be vital to the defense. In similar cases, courts have found bad faith where the government agent involved in the destruction of the evidence knew that it was important to the defense. *See, e.g., Bohl*, 25 F.3d at 913; *Zaragoza-Moreira*, 780 F.3d at 980; *Cooper*, 983 F.2d at 931.

Second, the government knew that the testing would destroy the firearm. FBI Special Agent Cortez wrote that he and Hancock were “tracking that the requested testing *will* alter the firearm and it *will no longer be in the same physical condition* that it was seized in” following the testing. Ex. K (Email Chain) at 3 (emphasis added). Yet no one in the government informed Baldwin about the looming destruction of the key evidence, or even to document the original condition of the internal parts so that the defense would have that information available in any future prosecution. Indeed, if the government was actually concerned with doing justice in this case, rather than securing convictions no matter the truth, prosecutors and law-enforcement officers would have stressed the need to document the firearm’s internal components and to conduct comprehensive non-destructive testing before smashing the firearm with a mallet. The government’s complete failure to take reasonable steps to preserve evidence for the defense is highly probative of bad faith. *See, e.g., Jimerson v. Payne*, 957 F.3d 916, 930-31 (8th Cir. 2020)

(finding bad faith after state deleted recording of co-defendants confession); *Cooper*, 983 F.2d at 931 (defendant had told the government that lab was being used for legitimate purposes, after which the government destroyed the lab).

Third, the testing that the government conducted had no realistic chance of either confirming or refuting Baldwin's statement that he had not pulled the trigger. No one claimed that the firearm had been struck with a blunt object like a mallet (while many reported that the gun just "went off"). Rather, the question was whether it was possible that the gun malfunctioned when Baldwin pulled the hammer back and released it. The irrelevance of the FBI's testing should come as no surprise: the lead FBI investigator had never performed the testing on actual evidence—he had only done it in training. He made no effort to moderate the force of the blows that he inflicted on the firearm, or to inflict the minimum force necessary to complete his test. Rather, he stated to the government that he "did not take it easy" on the firearm. Ex. O (1/13/21 Interview of B. Ziegler) at 31:1-6. The government's inexplicable conduct—committed as part of a single-minded effort to prove that Baldwin had pulled the trigger—is further evidence of its egregious bad faith. *See Soriano*, 401 F. Supp. 3d at 404 (finding bad faith "[g]iven the entirely unexplained, wholesale destruction of evidence supporting the defense by experienced federal agents").

Fourth, for the reasons explained at length in the briefing on Baldwin's motion to dismiss the indictment, the government has continued to act in bad faith throughout these proceedings, including (among other bad acts) by charging Baldwin under a statute enacted after the accident, violating court orders, engaging in an unethical press campaign, refusing to make witnesses available to the grand jury, and deciding to prosecute Baldwin based on false rumors about a documentary. That is further confirmation that the government has acted in bad faith all along.

The bad faith here—intentionally destroying crucial evidence in the case without taking even the most rudimentary steps to document its original state—far exceeds the threshold required under *Youngblood*. The due process violation is clear and requires dismissal.

II. THE GOVERNMENT’S DESTRUCTION OF THE FIREARM ALSO VIOLATED NEW MEXICO LAW

The prosecution should also be dismissed for a third, distinct reason: the government violated New Mexico law when it destroyed the firearm. The New Mexico Supreme Court has established “a three-part test” under state law “to determine whether deprivation of evidence by the State constitutes reversible error.” *Scoggins v. State*, 1990-NMSC-103, ¶ 8, 802 P.2d 631. “The purpose of the three-part test is to assure that the trial court will come to a determination that will serve the ends of justice.” *State v Chouinard*, 1981-NMSC-096, ¶ 16, 634 P.2d 680. Under that standard, courts must assess the following factors:

- (1) The State either breached some duty or intentionally deprived the defendant of evidence;
- (2) The improperly “suppressed” evidence must have been material; and
- (3) The suppression of this evidence prejudiced the defendant.

Id. Importantly, when the second two factors—materiality and prejudice—are met, the defendant need *not* establish a breach of duty or intentional deprivation. *Id.* ¶ 24. In addition to the factors, “the unavailable evidence . . . must in some way have been ‘determinative of guilt.’” *Scoggins*, 1990-NMSC-103, ¶ 8 (quoting *Chouinard*, 1981-NMSC-096, ¶ 18).

In this case, each of the three main factors is met and, under the prosecution’s legal theory, the question whether the firearm in its original state could have discharged without pulling the trigger is in some way “determinative of guilt.” Accordingly, the government’s intentional destruction of the firearm, which prevents Baldwin from confirming and analyzing its original condition and testing it in that original state, violated New Mexico law.

Breach of Duty or Intentional Deprivation of Evidence. For the reasons explained above, the government intentionally deprived Baldwin of access to the original state of the firearm for examination and testing. To recap briefly: the SFSO sent the firearm to the FBI specifically to “disprove” Baldwin’s statements that he had not pulled the trigger. The SFSO and the FBI both expressly acknowledged that the testing would change the original state of the firearm. But they did not bother to disassemble the firearm and record the original condition of its parts, despite obvious indications on the exterior of the firearm that it had been modified. Nor did they record the specific testing they conducted or notify Baldwin or his counsel that they planned to permanently alter the firearm. The government thus intentionally deprived Baldwin of the firearm in its original condition.

The government also breached a legal duty. As an initial matter, under *Brady v. Maryland*, 373 U.S. 83 (1963), the government is required to turn over exculpatory evidence to the defense. *See generally State v. Turrietta*, 2013-NMSC-036, ¶ 35, 308 P.3d 974. The government was well aware that Baldwin was a person of interest at the time; they wrote that expressly in their files, (FBI Report at 72, 76), and the entire purpose of the testing was to disprove his exculpatory statements (to say nothing of the statements by other witnesses that it “went off”). But instead of taking steps to preserve the evidence for the defense as required by *Brady*, the government conducted destructive testing without informing Baldwin. That violated the government’s *Brady* obligations—a bedrock legal duty.

Separately, under New Mexico law, “the State has a duty to preserve, where reasonably practical, relevant evidence obtained in the investigation of a crime.” *State v. Stephens*, 1979-NMSC-074, ¶ 8, 600 P.2d 820. The government violated that duty as well by failing to preserve or document the firearm in its original condition.

Materiality. There can be no doubt that the original state of the firearm is material in this case. Whether Baldwin pulled the trigger is central to the government's theory of guilt, and the government obviously concluded that the firearm's functioning was critical when it requested the FBI testing.

Prejudice. For the reasons explained above, the destruction of the firearm prejudiced Baldwin. He can no longer prove with absolute certainty the modified condition of the revolver's internal components before the FBI's testing. He can no longer enlist an expert to conduct testing on the firearm in its original state to determine whether it could have accidentally discharged by manipulating the hammer without pulling the trigger. That question is central to the prosecution's allegations, yet the government's own actions have substantially diminished Baldwin's ability to answer it. The prejudice here is overwhelming.

Accordingly, whether the Court analyzes this case under U.S. Supreme Court due process precedents or New Mexico standards, the result is the same: the government egregiously and inexplicably violated Baldwin's rights by destroying the firearm without documenting its original condition.

III. DISMISSAL IS THE APPROPRIATE REMEDY

For the above reasons, the government's intentional destruction of central evidence in this case violates both the Due Process Clause of the Fourteenth Amendment and New Mexico law. The appropriate remedy for that outrageous violation of Baldwin's rights is dismissal of the indictment with prejudice. Simply put, there is no way to undo what the government has done. Although Baldwin's attorneys can make their best effort to persuade a jury that the defects or modifications to the sear and the hammer notches—including the virtually nonexistent full-cock notch—preexisted the FBI's testing, Baldwin has forever lost the chance to prove that fact without doubt, because the government did not even take the basic step of documenting the condition of

the firearm's internal components before destroying it. And Baldwin's counsel will never be able to test the firearm in its original state to determine whether pulling the hammer would have resulted in a discharge. Yet the government's theory of guilt involves Baldwin pulling the trigger. *See* MTD at 30; Ex. D (HGR Trial, Day 10) at 77:15-19. In similar circumstances, both federal and New Mexico courts have dismissed charges with prejudice. *See, e.g., Bohl*, 25 F.3d at 914; *Cooper*, 983 F.2d at 933; *Soriano*, 401 F. Supp. 3d at 405; *Scoggins*, 1990-NMSC-103, ¶ 10. That is the necessary and appropriate remedy here.

Although declining to dismiss the case would conflict with both federal and state law, if the Court nevertheless declines to dismiss the case then, at a minimum, it should prohibit the government from suggesting to the jury that Baldwin pulled the trigger, since the government's own unlawful actions have deprived Baldwin of an adequate opportunity to rebut that accusation. Specifically, in those circumstances, the Court should issue an order with two directives: (1) the government should not be allowed to present evidence (fact or expert) or argument that Baldwin pulled the trigger, and (2) the jury should receive an instruction that Baldwin did not pull the trigger. *See, e.g., State v. Lovato*, 1980-NMCA-126, ¶ 10, 617 P.2d 169 (reversing conviction and remanding for new trial with destroyed evidence suppressed); *United States v. Elliott*, 83 F. Supp. 2d 637, 649 (E.D. Va. 1999) (suppressing destroyed evidence).

IV. IF THE COURT IS NOT INCLINED TO DISMISS BECAUSE OF A FACTUAL ISSUE, IT SHOULD HOLD AN EVIDENTIARY HEARING

As demonstrated above, the material facts on which this motion is based are clear and undisputed. And the government's legal violation is clear based on those undisputed facts, including the trial testimony, the government's indictment and instructions to the grand jury, and contemporaneous emails demonstrating that the government requested the firearm testing to disprove Baldwin's statement and knew that the testing would permanently alter the original

condition of the firearm. *See supra* at 1-3, 16-25. Thus, this motion can and should be resolved without an evidentiary hearing. But if the Court concludes that material factual disputes exist that prevent the resolution of this motion, the Court should hold an evidentiary hearing. Factual questions about whether the government violated its obligations to preserve and disclose evidence are for the Court to resolve, not the jury. Baldwin has a constitutional right not to undergo a trial rendered fundamentally unfair by the government's intentional destruction of crucial evidence, and that right must be enforced by the courts.

CONCLUSION

This Court should dismiss the indictment with prejudice. In the alternative, the Court should prohibit the government from presenting argument or evidence to the jury that Baldwin pulled the trigger of the firearm and instruct the jury that he did not do so.

Date: May 6, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2024, a true and correct copy of the foregoing brief was emailed to opposing counsel.

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