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 RESPONSE TO THE STATE'S MOTION *IN LIMINE* 6 TO EXCLUDE REFERENCES TO PROSECUTORIAL MISCONDUCT

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Defendant Alec Baldwin, by and through his attorneys, submits this response to the State's motion *in limine* number 6 to preclude defense counsel from referencing prosecutorial misconduct during this case at trial.[1]

ARGUMENT

At last week's *Trombetta* hearing, Special Prosecutor Johnson argued that Baldwin's *Trombetta* motion should be denied because Baldwin has "other reasonable available means to get to making their point" about the State's reliance on improper expert disclosures to bolster unreliable expert testimony and downplay the consequences of the State's mishandling of evidence—*i.e.*, a trial. Ex. A (6/24/24 H'rg Tr. at 136:23-137:3. ("Defense counsel effectively used this information in cross-examining just in this motion hearing alone. It looked like he was doing it for a trial, but that right there demonstrated that they have other reasonable available means to get to making their point."). Yet the very same day, the State filed this motion, which seeks to preclude, among other things, "allegations of misconduct and constitutional violations which they have lodged against the State during pretrial litigation," which was a significant part of the cross-examination that Johnson was referring to. Mot. 1. The State can't have it both ways.

Baldwin has no intentions of making gratuitous *ad hominem* attacks on the State. But if evidence or testimony shows that the State mishandled evidence or engaged with certain witnesses in a manner that impacts their credibility, the jury is entitled to consider those facts when evaluating the quality of the State's evidence and investigation, the credibility of the State's factual positions, and the merit of the State's case. *See, e.g.*, *State v. Hester*, 1999-NMSC-020, ¶ 17, 979 P.2d 729 ("Defense counsel extensively cross-examined the State's witnesses to show gaps in the

[1] To the extent the State's motion *in limine* number 6 intends to exclude evidence that is more fully described in its motion *in limine* number 3, which appears to be partially duplicative of this motion, Baldwin incorporates his response to State's motion number 3 here.

police investigation and to thereby suggest reasonable doubt."); *Smith v. Sec'y of New Mexico Dep't of Corr.*, 50 F.3d 801, 830 (10th Cir. 1995) (recognizing that "the knowledge the police were investigating [a witness for the prosecution as an alternate suspect] would arguably carry significant weight with the jury in and of itself" and "would also have been useful in "discredit[ing] the caliber of the investigation or the decision to charge the defendant").[2] Further, the defense is entitled to vigorously cross-examine law enforcement witnesses, and evidence of their bias and motives is always relevant. *See, e.g.*, *United States v. Abel*, 469 U.S. 45, 51 (1984); *Davis v. Alaska*, 415 U.S. 308, 317–18 (1974).

To support its staggering claim that Baldwin is not entitled to introduce evidence related to the quality of the law enforcement investigation, the State cites a single, unpublished, out-of-state, federal case, *United States v. Allerheiligen*, 1998 WL 918841 (D. Kan. Nov. 19, 1998), which held that "evidence *solely* related to those legal issues previously decided by the court" in a suppression order would not be allowed at trial. *Id.* At *4 (emphasis added). The case is distinguishable. While evidence "solely" related to issues already decided by the Court might be inadmissible at trial, evidence of the State's mishandling of evidence, bias, and other similar

[2] *See also, e.g.*, *Kyles v. Whitley*, 514 U.S. 419, 445 (1995) (noting that the "thoroughness and even the good faith of the investigation" were proper subjects of inquiry at trial); *State v. Patterson*, 2017-NMCA-045, ¶ 18, 395 P.3d 543 (holding that jury's perception of law enforcement agent's credibility was critical to a criminal defendant's ultimate conviction and exclusion of inquiry into truthfulness of undercover agent's police report based on relevance was in error and not harmless, requiring reversal of conviction); *United States v. Cota-Meza*, 367 F.3d 1218, 1223 (10th Cir. 2004) (affirming jury instructions because they "specifically note[d] that the jury can consider the manner in which the investigation was conducted for the purposes of evaluating the weight of the evidence produced by the government and the credibility of the testimony of the law enforcement personnel involved in the investigation."); *United States v. Freeman*, 816 F.2d 558, 563 (10th Cir. 1987) (admitting statements of law enforcement officer outlining the background of the government investigation of criminal defendant); *United States v. Stanfield*, 521 F.2d 1122, 1128–29 (9th Cir. 1975) (remanding for new trial because district court limited cross-examination of police officers who had questionable credibility).

conduct is not "solely" related to issues under *Brady*, *Trombetta*, and *Youngblood*. It is also probative, relevant, and clearly admissible under settled law to show the weight and credibility of the State's evidence. *See Hester*, 1999-NMSC-020, ¶ 17, *Smith*, 50 F.3d at 830. The State fails to cite a single case to the contrary. In fact, as noted above, the State admitted at the *Trombetta* hearing that everything Baldwin's counsel did at that hearing, which included challenging the quality of the State's investigation and disclosures, among other problematic issues, was fair game for trial. *See* Ex. A (6/24/24 H'rg Tr. at 136:23-137:3 ("Defense counsel effectively used this information in cross-examining just in this motion hearing alone. It looked like he was doing it for a trial, but that right there demonstrated that they have other reasonable available means to get to making their point.").

The Court should deny the State's motion.

Date: July 1, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2024, a true and correct copy of the foregoing brief was emailed to opposing counsel.

/s/ Heather LeBlanc
Heather LeBlanc

EXHIBIT A

Transcript of Remote Proceedings

Date: June 24, 2024

Case: State of New Mexico v. Alec Rae Baldwin, III
Case Number:D-0101-CR-2024-0013

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conform to certain chemical specifications.
During the building of these legs, they received FAA quality reliability officer certificates that said they conform. But then unfortunately, subsequently to their construction of these radio towers, the -- one of them basically did not -- it malfunctioned, essentially broke.
And so Mr. Bohl and his business partner get charged in federal court, and they basically tell the government through their counsel, please preserve these tower legs. We have this certificate from the FAA quality reliability officers who certified that these tower legs conformed to chemical specifications.
The government, on the other hand, had testing that they had initially sent off to the University of Maine, or part of the tower leg they sent off to the University of Maine to have it tested. That test showed that they did not conform to the chemical specifications.
So in this particular test -- or in this particular case, the US 10th Circuit Court of Appeals found and actually held that the defense didn't meet Trombetta, they didn't meet, and the analysis in that case was under Arizona versus Youngblood, despite the

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fact that the defense had independent objective evidence.
And the reason the State brings that to the Court's attention is because at Page 911 of that opinion it says, "Second, Bell and Bohl's assertion" -- and I'm quoting directly from the opinion.
"Second, Bell and Bohl's assertion that the tower legs possess potentially exculpatory value was not merely conclusory but instead was backed up with objective independent evidence giving the government reason to believe that further tests on the leg might lead to exculpatory evidence."
We don't have that in that case, Your Honor. And that was also noted, that kind of language was noted in the US 10th Circuit Court of Appeals opinion in United States versus Martinez, 744F.2d 76. And in that case, the defendant was charged with possession and making explosives.
Law enforcement seized a package, they essentially removed the blasting cap from the device, they opened the wrapper, and then they took the material, they burned it, and they buried it. They also transported other materials, such as a manilla envelope that contained a mailing label, but, unfortunately -- well, they actually processed that

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for fingerprints and they photographed it. But then they subsequently destroyed it.
Mr. Martinez filed a motion to dismiss under Trombetta. The 10th Circuit Court of Appeals affirmed the district court's denial of the Trombetta motion and noted that the defense was merely arguing. So what the defense was arguing was the manilla envelope could have been exculpatory, the mailing label could have obtained, could have been processed for DNA for saliva on the mailing label to determine it was not Mr. Martinez, and, in fact, they argued that there was no evidence that these items that were destroyed were even explosive devices.
The 10th Circuit noted that other than conjecture and speculation, not independent objective evidence, the defense had not demonstrated that these items before they were destroyed were apparently exculpatory to law enforcement. Again, what we have here.
But then you also have to look at the second prong of the Trombetta test and that is does the defense have other available comparable evidence that they could use in this issue? That is addressed by United States versus Ludwig, which is 641F.3d 1243, also a 10th Circuit Court of Appeals decision.

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And in Ludwig, the law enforcement officer conducted a traffic stop, they lost or destroyed the video that documented this traffic stop and the defense filed a motion to dismiss under Trombetta. The 10th Circuit noted that Ludwig did have other comparable evidence that could be obtained by other reasonable means and that Page 12- -- 1254 of that opinion, the 10th Circuit notes, "We rejected defendant's Trombetta claim reasoning that the defendant could have called witnesses to the event to adduce what the missing videotaped evidence showed."
They have that in this case. You have the officers who seized this gun, you have Mr. Ziegler who conducted the accidental discharge test, you have Mr. Haag, Luke Haag, Mike Haag, who can testify about their analysis and examination. The parts are still available.
The fact that this gun was unfortunately damaged during the accidental discharge testing does not deprive the defendant of the evidence that they could use effectively in cross-examining and we saw that.
Defense counsel effectively used this information in cross-examining just in this motion hearing alone. It looked like he was doing it for a

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trial, but that right there demonstrated that they have other reasonable available means to get to making their point.

So they fail under Trombetta.

So then we go in to Arizona versus Youngblood. Under Arizona versus Youngblood, the US Supreme Court added a third test that in order for the defense to demonstrate a due process violation, they have to show that the evidence -- excuse me -- that the law enforcement acted in bad faith.

And at Page 57 from the Youngblood decision, 488 US Page 57, it says that basically when you deal with failure to preserve and I quote, "evidentiary material of which no more can be said, then it could have been subjected to tests, the results which might have exonerated the defendant, the Court has to look at the third prong and that is that there was bad faith on the part of the law enforcement."

And that bad faith element actually dovetails with Trombetta's first element, which talks about what essentially law enforcement was aware of.

So you have to look at what was law enforcement aware of in this case. And, Your Honor, a dispassionate review of the evidence in this case

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leads one to conclude that the exculpatory value of this firearm in the condition it was in on October 21st, 2021, is extremely low.

First, Mr. Baldwin himself told OSHA investigators that the gun had no mechanical defects. In fact, he was asked specifically -- Corporal Hancock testified to that, he was asked, "Was there anything mechanically wrong with the gun?"

He said, "No. There was nothing wrong. I'd been using it for days. The only problem was that it was -- there was live bullet in the gun." Those were his words.

That could not put law enforcement on notice that this gun had, if you believe their theory, some potential mechanical defects.

When he was interviewed by law enforcement on October 21st, 2021, he never said, "I didn't pull the trigger" to the officers. He said, "The gun went off."

Well, saying the gun went off is not the equivalent of saying there was something wrong with this gun. People say the gun went off because nobody was expecting that a live bullet would be in there, it's unknown. But what we know is that when somebody says the gun went off does not equate to there's

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something wrong with this gun. So there was no way for law enforcement to be put on notice that there could be anything wrong with this firearm.

And the United States versus Bohl decision, Your Honor, was actually a good decision for this Court to look at because in that case, what you had, and the Court did find a due process violation under Youngblood. They didn't find it under Trombetta because they, as I mentioned earlier, the defense did not demonstrate that it was immediately apparent at the time.

But under Youngblood, they did find bad faith, and the reason they found bad faith in Bohl is because, number one, the defendants had this certificate from the FAA quality assurance officers that indicated these tower legs conform to chemical specifications. And then they asked the government when the government seized the tower legs to please preserve the legs. They begged the government to allow them to conduct testing on these legs, and despite getting these numerous requests, the government destroyed the tower legs.

The Court in Bohl did find that that is bad faith because they knew not only that they had the FAA certificate, they also were put on notice by

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the defendants, hey, these tower legs conform to specifications. Nevertheless the government destroyed them.

That's not what we have here. What we have here is a gun that everybody who handles this gun was in perfect working order from the man who manufactured -- manufactured this gun, Mr. Pietta, to the person who received it after him, to the person who bought it from EMF, to law enforcement, to Mr. Ziegler, and all the way down to the Haags.

I want to briefly just address this red herring that the defense raised about Mr. Haag's August 31st, 2023, report.

First of all, Your Honor, there is no intentional wrongdoing here. Ms. Morrissey has accepted it was an oversight. She forgot to e-mail it. But, anyway, that's I'm sure the subject of yet another motion that's been filed before the Court, but what's important there is that Mr. Haag in that report did not say there were modifications to this gun. What he said, there were "irregular off axis diagonal tool marks of an unknown origin. It seems unlikely, although it cannot be excluded that these tool marks were made by the FBI's testing."

So he doesn't say the FBI testing didn't