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KATHLEEN VIGIL CLERK OF THE COURT
Marina Sisneros

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,
Plaintiff,

v.

No. D-101-CR-2024-00013

ALEXANDER RAE BALDWIN III,
Defendant.

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

THIS MATTER came before the Court on Defendant Alec Baldwin's Motion to Dismiss the Indictment with Prejudice Based on the State's Destruction of Evidence, filed May 6, 2024. Having reviewed the briefing, considered oral argument, conducted an evidentiary hearing, and being otherwise fully advised, THE COURT FINDS, CONCLUDES, AND ORDERS:

PROCEDURAL SUMMARY

On May 6, 2024, Defendant Alexander Rae Baldwin III ("Defendant") filed his Defendant Alec Baldwin's Motion to Dismiss the Indictment with Prejudice Based on the State's Destruction of Evidence ("Motion to Dismiss" or "MTD"). Thereafter, on May 21, 2024, the State filed its State's Response to Defendant's Motion to Dismiss the Indictment with Prejudice Based on the State's Destruction of Evidence ("Response"). In turn, on June 5, 2024, Defendant filed his Reply Brief in Support of Motion to Dismiss the Indictment with Prejudice Based on the State's Destruction of Evidence ("Reply"). Defendant filed an Addendum to Defendant Alec Baldwin's Motion to Dismiss the Indictment with Prejudice Based on the State's Destruction of Evidence on June 17, 2024 ("Addendum").

On June 21, 2024 and June 24, 2024, the Court held an evidentiary hearing and considered oral argument on Defendant's Motion to Dismiss. The State called three witnesses to testify: Santa Fe County Sheriff's Office Corporal Alexandria Hancock, Federal Bureau of Investigation Forensic Examiner Bryce Ziegler, and Mr. Lucien Haag. These witnesses were examined by both parties. The Court admitted exhibits separately submitted by the parties. Following argument, the Court reserved ruling on the motion. The Court now enters its ruling through the instant order.

FACTUAL BACKGROUND

Defendant's Motion to Dismiss concerns the State's testing of "an Italian-manufactured facsimile of the Colt 1873 single-action (S/A) revolver chambered for the .45 Colt cartridge and made by the Pietta firm in Gussago, Italy and imported by E.M.F. in Santa Ana, California." MTD Ex. G at 3. On October 21, 2021, when Defendant Baldwin "was rehearsing his movement for the camera, [the aforementioned firearm] discharged." MTD 3-4. Further, "the firearm discharged while [Defendant] was holding it." MTD 4.

During the course of the State's investigation into the incident, Defendant "made statements that he didn't pull the trigger, and . . . that 'the gun just went off.'" MTD Ex. A, Tr. 146; *see also* Resp. Ex. 1, Tr. 36-37. Thus, State investigators "needed to figure out how to disprove that theory or that statement, . . ." MTD Ex. A, Tr. 146.

To do so, the Federal Bureau of Investigation conducted accidental discharge testing, with a goal to "determine can [the examiner] fire this fire[arm] without pulling the trigger." MTD Ex. E, Tr. 27. Accidental discharge testing is "designed to simulate the firearm being bumped or banged into something, just being jostled around, and seeing can those kind of interactions fire the firearm." *Id.* at 27-28.

The accidental discharge testing was performed by FBI Forensic Examiner Bryce Ziegler around April 2022. *See* MTD Ex. K. Examiner Ziegler performed the testing by "strik[ing] [the firearm] with a rawhide mallet on six planes." MTD Ex. E, Tr. 28; *see also id.* ("Ms. Morrissey: And, specifically, when you're striking the firearm, are you striking the hammer? Mr. Ziegler: That was a part of the testing that I did, yes."). Before conducting the testing, the FBI obtained permission from the Santa Fe County Sheriff's Office to proceed, because the contemplated "type of testing is potentially destructive to the firearm." *Id.* at 28-29; MTD Ex. K.

While engaging in the accidental discharge testing, Examiner Ziegler achieved discharge of the firearm in two instances. The first instance was "when the hammer was at rest on a loaded chamber . . . [when] the firing pin was sitting directly on the primer." MTD Ex. E at 29-30. According to Examiner Ziegler, that discharge scenario was "a known feature of this type of firearm." *Id.* at 30.

The second instance occurred "when the hammer was in the fully [cocked] position, and [Examiner Ziegler] was doing [his] striking in the six planes, . . . and eventually, [Examiner Ziegler] got to the rear of the firearm, so that – that back plane, and eventually at some point, [Examiner Ziegler] struck the hammer with a rawhide mallet, and the hammer actually fell, and it detonated the primer." *Id.* Nonetheless, because of the design of the firearm with quarter-cock and half-cock hammer notches, Examiner Ziegler surmised that the hammer "should not have been able to fall all that way. So this is what led [Examiner Ziegler] to believe that there was some type of damage that occurred within the gun. And eventually, [Examiner Ziegler] disassembled [the firearm] to figure out exactly what that damage was." *Id.*

Upon disassembly of the firearm, Examiner Ziegler discovered damage or potential damage to the following components of the firearm. First, "a piece of [the cylinder stop] fractured

off." MTD Ex. E at 33. Second, a "tiny piece [of the trigger/sear] . . . fractured off the trigger." *Id.* Third, Examiner Ziegler noted that the full-cock notch on the hammer (*i.e.*, the "actual sear notch," *id.*) "appears much flatter when you compare it to the other two notches." *Id.* at 34. However, Examiner Ziegler expounded that "there are times where the sear notch is just not as pronounced as the other two notches." *Id.* Thus, Examiner Ziegler "didn't observe any damage . . . in this particular area, but it's possible that that area was damaged as well." *Id.*; *see also* MTD Ex. L (photograph exhibiting damaged or potentially damaged components of firearm). Eventually, the FBI returned the firearm to State investigators, and the firearm remains in its damaged condition today. *See* MTD Ex. G at 3 ("Subsequent disassembly of this revolver on July 6, 2023 revealed that the full-cock step on the hammer had been severely damaged, the top of the trigger's sear was broken off and the bolt (cylinder stop) was also broken.").

On May 6, 2024, Defendant filed his Motion to Dismiss. Defendant explains, "[t]he government took the most critical evidence in this case—the firearm—and ***destroyed*** it by repeatedly and pointlessly striking it with a mallet." MTD 1. Thus, Defendant argues, "[u]nder time-honored principles of due process, the charges must be dismissed." *Id.*

ANALYSIS AND RULING

Defendant's Motion to Dismiss makes three primary arguments in support of the requested relief of dismissal. Defendant argues, "[t]he 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." MTD 12. Specifically, Defendant asserts that the government's action implicates safeguards adopted in *California v. Trombetta*, 467 U.S. 479 (1984), and *Arizona v. Youngblood*, 488 U.S. 51 (1988). MTD 12. Further, Defendant asserts, "[t]he government's

intentional destruction of the firearm also violates New Mexico law." *Id.* As to relief, Defendant asks the Court to "dismiss this action with prejudice, or, in the alternative, preclude evidence or argument from the prosecution regarding whether Baldwin pulled the trigger, and instruct the jury that he did not do so." Reply 19.

The Court addresses Defendant's arguments below.

A. Summary of Law on Evidence Destroyed by the State.

The Court first addresses germane due process protections afforded to defendants under federal law. "Under the two-prong *Trombetta* test, the government violates a defendant's right to due process when: (1) it destroys evidence whose exculpatory significance is 'apparent before' destruction; and (2) the defendant remains unable to 'obtain comparable evidence by other reasonably available means.'" *United States v. Bohl*, 25 F.3d 904, 909-10 (10th Cir. 1994) (quoting *Trombetta*, 467 U.S. at 489). "To invoke *Trombetta*, a defendant must demonstrate that the government destroyed evidence possessing an 'apparent' exculpatory value." *Id.* at 910 (quoting *Trombetta*, 467 U.S. at 489); *see also Johnson v. City of Cheyenne*, 99 F.4th 1206, 1229 (10th Cir. 2024) ("On this question of the apparent exculpatory value of the evidence, [defendant] bears the burden of proof.").

In turn, in application of *Arizona v. Youngblood*, "[i]f the exculpatory value of the evidence that the [government] failed to preserve is indeterminate, then the defendant must show: (i) that the evidence was potentially useful for the defense; and (ii) that the government acted in bad faith in destroying the evidence." *United States v. Harry*, 927 F.Supp.2d 1185, 1216 (D.N.M. 2013) (Browning, J.) (quoting *United States v. Bohl*, 24 F.3d at 910, & *Youngblood*, 488 U.S. at 58) (quotation marks omitted). Potentially useful evidence is "evidentiary material 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." *Youngblood*, 488 U.S. at 57. The Court's "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. *); *see also United States v. Carrillo*, 1:19-cr-01991 KWR, 2020 WL 2395961, at *2 (D.N.M. May 12, 2020) ("Defendant bears the burden on *Trombetta* and *Youngblood* claims, and has the burden of asserting facts relevant to the elements at issue.").

"In determining whether the government failed to preserve evidence in bad faith, the Tenth Circuit first considers whether the government was on notice of the potentially exculpatory evidence, and whether the potential exculpatory value of the evidence is based on more than mere speculation or conjecture." *Harry*, 927 F.Supp.2d at 1217. "Second, the Tenth Circuit also looks to whether the government had 'possession or the ability to control the disposition' of potentially exculpatory evidence at the time the government is put on notice to its existence." *Id.* (quoting *Bohl*, 25 F.3d at 912). "Third, the Tenth Circuit weighs whether the evidence 'was central to the government's case,' as opposed to the government possessing evidence 'more probative on the issue.'" *Id.* (quoting *Bohl*, 25 F.3d at 912). "Fourth, the Tenth Circuit considers whether the government is able to offer an 'innocent explanation for its failure to preserve' potentially exculpatory evidence." *Id.* (quoting *Bohl*, 25 F.3d at 912-13).

The Court addresses New Mexico law concerning destroyed evidence. In *State v. Chouinard*, 1981-NMSC-096, ¶ 16, 96 N.M. 658, the New Mexico Supreme Court set out a "three-part test to determine whether deprivation of evidence is reversible error." Under *Chouinard*, the Court considers: (a) whether the "State either breached some duty or intentionally deprived the defendant of evidence," *id.*; (b) whether the "improperly 'suppressed' evidence [was] . . . material," *id.*; and, (c) whether the "suppression of this evidence prejudiced the defendant," *id.* "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." *Id.*

"It is generally understood that the State has a duty to preserve evidence obtained during the investigation of a crime." *State v. Pacheco*, 2008-NMCA-131, ¶ 28, 145 N.M. 40. "When evidence is lost in a way that does not involve bad faith, the defendant bears the burden of showing materiality and prejudice before sanctions are appropriate." *Id.* ¶ 30.

"Determination of materiality and prejudice must be made on a case-by-case basis. The importance of the lost evidence may be affected by the weight of other evidence presented, by the opportunity to cross-examine, by the defendant's use of the loss in presenting the defense, and other considerations." *Chouinard*, 1981-NMSC-096, ¶ 25. "The prejudice prong of the *Chouinard* test contains at least two components: the importance of the missing evidence to defendant, and the strength of the other evidence of defendant's guilt." *State v. Bartlett*, 1990-NMCA-024, ¶ 8, 109 N.M. 679. Further, in *Chouinard*, the New Mexico Supreme Court implied materiality means "a realistic basis, beyond extrapolated speculation, for supposing that availability of the lost evidence would have undercut the prosecution's case." *Chouinard*, 1981-NMSC-096, ¶ 26. Subsequently, in *State v. Fero*, the New Mexico Supreme Court expounded on the meaning of materiality for lost or destroyed evidence: "Whether evidence is material depends on 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome.'" *Fero*, 1988-NMSC-053, ¶ 10, 107 N.M. 369 (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)).

"Where the loss is known prior to trial, there are two alternatives: Exclusion of all evidence which the lost evidence might have impeached, or admission with full disclosure of the loss and

its relevance and import. The choice between these alternatives must be made by the trial court, depending on its assessment of materiality and prejudice. The fundamental interest at stake is assurance that justice is done, both to the defendant and to the public." *Chouinard*, 1981-NMSC-096, ¶ 23.

B. The *Trombetta* Standard Is Not Met.

Applying *Trombetta*, the Court finds and concludes that neither prong is satisfied. *See generally Bohl*, 25 F.3d at 909-10 ("Under the two-prong *Trombetta* test, the government violates a defendant's right to due process when: (1) it destroys evidence whose exculpatory significance is 'apparent before' destruction; and (2) the defendant remains unable to 'obtain comparable evidence by other reasonably available means.'" (citations omitted)).

As to the first prong, the State effectively concedes that the government altered the firearm during its accidental discharge testing. Resp. 4 ("When [Examiner Ziegler] struck the hammer with the mallet while the hammer was in the full-cock position, it ultimately fractured the trigger sear and shaved off the full-cock notch of the hammer.").

However, and critically, Defendant fails to establish, with respect to the firearm, "an exculpatory value that was apparent before the evidence was destroyed," *Trombetta*, 467 U.S. at 489.

The Court recognizes that Defendant Baldwin "has steadfastly denied pulling the trigger both in interviews with law enforcement and in public statements." MTD 16. In addition, Defendant offers that "other accidental discharges occurred on set and [the State] cannot dispute that several witnesses reported to the SFSO that the gun just 'went off.'" *Id.* (citing law enforcement supplemental reports). However, the referenced witness reports are ambiguous, *see* MTD Ex. N, and the other "accidental discharges" did not concern the firearm at issue, Response

2. Further, a defendant's statements alone are generally insufficient to engender apparent exculpatory value on a piece of evidence. *See, e.g.*, *United States v. Thomas*, 61 F.Supp.3d 1221, 1225-26 (D.N.M. 2014) ("[Defendant] offers nothing more than a bare assertion that he did not commit the crime to dispute this conclusion. Other courts confronted with similar facts have declined to find that such self-serving statements are sufficient to hold that evidence is exculpatory under *Trombetta*." (internal citation omitted)).

Rather, a significant amount of evidence indicates that the unaltered firearm[1] did not possess apparent exculpatory value. For instance, on December 8, 2021, Defendant explained to a New Mexico Occupational Health and Safety Bureau officer that "the problem with the gun is somebody put - - the problem with the gun is that there was a live bullet in there. That's the problem with the gun. . . . The problem didn't have to do with the gun. It had to do with the bullet." Resp. Ex. 1, Tr. 42.

Further, prior to the accidental discharge testing, Examiner Ziegler found the firearm to be fully operative and without modification. *See* MTD Ex. E, Tr. 31. Additionally, Mr. Lucien Haag, the State's proffered expert witness on firearms opined, "[i]n order to produce the [firing pin impression] in the SFSO Item 3 evidence cartridge case, the hammer of the evidence revolver, SFSO Item 1, had to be manually retracted to the fully-cocked position which simultaneously rotates, then locks and aligns the top chamber in the cylinder with the axis of the bore." Addendum Ex. 1, at p. 9. Mr. Haag further opined, "[o]nce this is accomplished, the trigger must either be pulled or depressed in the usual means of discharge, or already held rearward during the cocking

[1] The Court's use of "unaltered firearm," in the context of this order, means the firearm of concern in substantially and materially identical condition, functionality, and operability as it was on October 21, 2021.

process in order to release and allow the hammer to fall with its full force and drive the firing pin into the fully aligned cartridge's primer." *Id.* at p. 9-10.

In addition, Mr. Haag explained, "[i]f the hammer had not been fully retracted to the rear, and were to slip from the handler's thumb without the trigger depressed, the half cock or quarter cock notches in the hammer should have prevent the firing pin from reaching any cartridge in the firing chamber. If these features were somehow bypassed, a conspicuously off-center firing pin impression would result." *Id.* at p. 27; *see also* MTD Ex. E, Tr. 32 (Examiner Ziegler explaining that the firearm was designed such that the trigger sear would catch on the quarter or half cock notches "if your finger slips off the hammer," and that the firearm would not discharge from the quarter-cock and half-cock notches even with a trigger pull).

As to evidence not offered by tendered experts, the Court notes that the State's exhibits at the June 21, 2024 and June 24, 2024 evidentiary hearing included video evidence depicting Defendant unremarkably operating and firing the firearm prior to the October 21, 2021 incident.

Therefore, in light of the results of the State's witnesses' testing and other evidence, the Court finds that Defendant has failed to establish an apparent exculpatory value of the evidence, *i.e.*, the unaltered firearm. *See Bohl*, 25 F.3d at 910 ("The *Trombetta* standard of 'apparent' exculpatory evidence has not been met here because, on the record before us, the government's test results suggest that the towers' chemical composition failed to conform to the Contract specifications."). Thus, Defendant Baldwin fails to satisfy the first prong of the *Trombetta* standard.

As to the second prong, the Court finds that Defendant is able "to obtain comparable evidence by other reasonably available means." *Trombetta*, 467 U.S. at 489. Specifically, Defendant is able to examine the firearm in its current condition, examine and cross-examine

witnesses as to the functionality of the firearm prior to the destructive testing, and examine and cross-examine witnesses on the scope of the destructive testing. *See, e.g.*, MTD Ex. G (expert witness report concerning firearm, including analysis of damaged components); MTD Ex. L (visual depiction of damaged firearm components); Addendum Ex. 2 (expert witness supplemental report describing function test of damaged hammer and analysis thereof); Addendum Ex. 3 (expert witness supplemental report analyzing damaged firearm components); *United States v. Parker*, 72 F.3d 1444, 1452 (10th Cir. 1995) ("Defendants could have called Trooper Mangleson to adduce what the missing video tape evidence showed."); *United States v. Cayatineto*, 49 Fed.Appx. 278, 284 (10th Cir. 2002) ("[Defendant] Cayatineto had other means for obtaining the information contained in the photographs. Cayatineto had ample opportunity to cross-examine both Trujillo and the NDPS investigator who took the photographs, both of whom possessed knowledge relating to Trujillo's injuries. Alternatively, Cayatineto could have obtained the records from Trujillo's hospital visit or questioned the examining physician." (citation omitted)). Thus, the Court finds and concludes that the second prong of the *Trombetta* standard is not satisfied.

Therefore, the *Trombetta* standard is not satisfied.

C. The *Youngblood* Standard Is Not Met.

Applying *Youngblood*, the Court finds and concludes that neither prong is satisfied. *See Harry*, 927 F.Supp.2d at 1216 ("If the exculpatory value of the evidence that the [government] failed to preserve is indeterminate, then the defendant must show: (i) that the evidence was potentially useful for the defense; and (ii) that the government acted in bad faith in destroying the evidence." (citations and quotation marks omitted)).

As to the first prong, potentially useful evidence is "evidentiary material 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." *Youngblood*, 488 U.S. at 57. Here, Defendant asserts, "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." MTD 21. The Court finds that Defendant has failed to satisfy the first prong of the *Youngblood* standard.

The Court rejects Defendant's argument for the following three reasons. First, "the argument of counsel is not evidence," *State v. Cordova*, 2014-NMCA-081, ¶ 14, 331 P.3d 980, and Defendant offers no evidence, beyond speculation and conjecture, that additional "testing might have shown that the firearm was capable of firing without the pull of the trigger," MTD 21.

Second, although Defendant discusses the current impossibility of performing a "push-off" test on the firearm in an unaltered condition, "in which pressure is manually applied to the back of the hammer to determine if it will fall without a trigger pull," MTD 9, Defendant does not adequately explain how the performed accidental discharge testing is practically distinct from a push-off test. In other words, Examiner Ziegler's striking of the hammer with a rawhide mallet is itself the application of "pressure [] manually applied to the back of the hammer," *id.*

Third, the Court disagrees that "evidence of modifications . . . means that the 'potentially useful' standard has been satisfied by a wide margin." MTD 20. Evidence of a modification does not render an unaltered firearm potentially useful evidence without explanation as to how additional testing with the modification present might have exonerated Defendant. For instance, while the State's proffered expert witness Mr. Haag modified his opinion as to the origin of toolmarks on the sear during the June 24, 2024 hearing, the expert previously explained that the "toolmarks also are unlikely to have had any bearing on the operation of the revolver at the time

of the incident based on the FBI's trigger pull data, an FBI photograph of the hammer at full cock and substantial test-fired [*sic*] of the SFSO Item 1 evidence revolver conducted by the FBI prior to the damage to the trigger/sear and hammer." Addendum Ex. 3, at p. 2. Thus, without identification of how a modification may have impacted the firearm's functionality, or identification of the corresponding test to assess the claim, evidence of modification does not render an unaltered firearm potentially useful evidence. *Cf. Harry*, 927 F.Supp.2d at 1216 ("[T]he defendant must show: (i) that the evidence was potentially useful for the defense[.]" (emphasis added)).

As to the second prong, even if this Court were to conclude that an unaltered firearm meets the relatively low standard of potentially useful evidence, the Court does not find that the State acted in bad faith in altering the firearm. *See Illinois v. Fisher*, 540 U.S. 544, 548 (2004) ("At most, respondent could hope that, had the evidence been preserved, a *fifth* test conducted on the substance would have exonerated him. But respondent did not allege, nor did the Appellate Court find, that the Chicago police acted in bad faith when they destroyed the substance. Quite the contrary, police testing indicated that the chemical makeup of the substance inculpated, not exculpated, respondent[.]" (internal citation omitted)).

The Court applies the factors identified in *United States v. Harry* to assess whether the State acted in bad faith in destroying certain internal components of the firearm. *See Harry,* 927 F.Supp.2d at 1217. First, as to "whether the government was on notice of the potentially exculpatory evidence, and whether the potential exculpatory value of the evidence is based on more than mere speculation or conjecture," *id.*, this factor weighs against Defendant. While the State was on notice of Defendant's claims that he did not pull the trigger before the firearm discharged, given all other evidence indicating the functionality of the firearm on October 21,

2021, any exculpatory value of the evidence thus appears based on Defendant's statements alone. *Compare supra* ANALYSIS & RULING Part B, *with United States v. Beckstead*, 500 F.3d 1154, 1160 (10th Cir. 2007) ("In this case, [Defendant]'s arguments are conclusory. He does not point to any other, independent evidence that would have suggested to the Government, at the time it destroyed this evidence, that further testing of the methamphetamine lab might produce exculpatory evidence.").

Second, as to "whether the government had 'possession or the ability to control the disposition' of potentially exculpatory evidence," this factor weighs against the State. *Harry*, 927 F.Supp.2d at 1217 (citation omitted). The State or its agents controlled the disposition of the firearm and conducted the accidental discharge testing. *See supra* FACTUAL BACKGROUND.

Third, as to "whether the evidence 'was central to the government's case,' as opposed to the government possessing evidence 'more probative on the issue,'" *Harry*, 927 F.Supp.2d at 1217 (citation omitted), this factor weighs slightly against the State. The firearm itself is central to the government's case; however, there is other probative evidence as to the functionality of the firearm on October 21, 2021. *See supra* ANALYSIS & RULING Part B.

Last, as to "whether the government is able to offer an 'innocent explanation for its failure to preserve' potentially exculpatory evidence," *Harry*, 927 F.Supp.2d at 1217 (citation omitted), this factor weighs against Defendant. The State's innocent explanation for its failure to preserve certain internal components of the firearm is the State's need to assess Defendant's claim that the firearm malfunctioned on October 21, 2021. *See supra* FACTUAL BACKGROUND; *see also Bohl*, 25 F.3d at 914 ("Even if the government destroys or facilitates the disposition of evidence knowing of its potentially exculpatory value, there might exist innocent explanations for the government's conduct that are reasonable under the circumstances to negate any inference of bad faith."); *Riggs*

v. Williams, 87 Fed.Appx. 103, 106 (10th Cir. 2004) ("We have recognized that the 'mere fact that the government controlled the evidence and failed to preserve it is by itself insufficient to establish bad faith.' This is true even if the government acted negligently, or even intentionally, so long as it did not act in bad faith." (citations omitted)); *cf. Chouinard*, 1981-NMSC-096, ¶ 16 ("For example, where the evidence is used up during testing, a defendant is only able to cross-examine the State's witnesses. Thus if the substance in the present case had been used up during testing, the State would not have breached any duty, and there would have been no due process violation." (citation omitted)).

Ultimately, after considering the above factors, the Court finds and concludes that Defendant fails to establish that the State acted in bad faith when destroying certain internal components of the firearm in the course of the accidental discharge testing. *See United States v. Donaldson*, 915 F.2d 612, 614 (10th Cir.1990) (explaining that "it is the defendant who bears the burden of showing bad faith under *Youngblood*"). In other words, the evidence before the Court does not demonstrate that the State or its agents knew that the unaltered firearm possessed exculpatory value at the time of the accidental discharge testing, and nonetheless destroyed it, thereby indicating that the evidence may have exonerated the Defendant. *See Youngblood*, 488 U.S. at 58 ("We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, *i.e.*, those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant."); *see also id.* at 57 n.* ("The presence or absence of bad faith by the police for purposes of the Due Process Clause must necessarily turn on the police's knowledge of the exculpatory value of the evidence at the time it was lost or destroyed.").

Therefore, the *Youngblood* standard is not satisfied.

D. The Court Applies the *Chouinard* Test to the Instant Case.

Under *Chouinard*, the Court considers: (a) whether the "State either breached some duty or intentionally deprived the defendant of evidence," *Chouinard*, 1981-NMSC-096, ¶ 16; (b) whether the "improperly 'suppressed' evidence [was] . . . material," *id.*; and, (c) whether the "suppression of this evidence prejudiced the defendant," *id.*

As to the first *Chouinard* factor, the State generally has a duty to preserve evidence in its possession, and acted intentionally when authorizing the accidental discharge testing. *See Pacheco*, 2008-NMCA-131, ¶ 28 ("It is generally understood that the State has a duty to preserve evidence obtained during the investigation of a crime."); *supra* FACTUAL BACKGROUND. Nonetheless, because the Court does not find that the State acted in bad faith in destroying certain internal components of the firearm, the Court considers the factors of materiality and prejudice. *See supra* ANALYSIS & RULING Part C; *Pacheco*, 2008-NMCA-131, ¶ 30 ("When evidence is lost in a way that does not involve bad faith, the defendant bears the burden of showing materiality and prejudice before sanctions are appropriate.").

As to the second *Chouinard* factor, the Court finds that the suppressed evidence, *i.e.*, an unaltered firearm, is low in materiality under the *Chouinard* framework. Defendant has not demonstrated, beyond extrapolated speculation, a realistic basis that an unaltered firearm would have undercut the prosecution's case. *Chouinard*, 1981-NMSC-096, ¶ 26. In other words, Defendant has not established that had he or his experts possessed an unaltered firearm for subsequent tests or examination, there is a reasonable probability that the results would be different. *See Fero*, 1988-NMSC-053, ¶ 10 (defining material as a "reasonable probability that,

had the evidence been disclosed to the defense, the result of the proceeding would have been different").

As to the third *Chouinard* factor, the Court finds that the suppression of the evidence, *i.e.*, the destruction of certain internal components of the firearm, is not highly prejudicial under the *Chouinard* framework. *Bartlett*, 1990-NMCA-024, ¶ 8 ("The prejudice prong of the *Chouinard* test contains at least two components: the importance of the missing evidence to defendant, and the strength of the other evidence of defendant's guilt."). While Defendant contends that an unaltered firearm is critical to his case, other evidence concerning the functionality of the firearm on October 21, 2021 weighs against Defendant's assertions. *See supra* ANALYSIS & RULING Parts B, C.

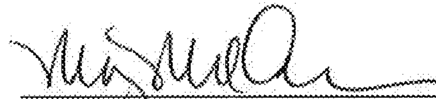
Given the Court's above assessment of materiality and prejudice, the Court concludes that the State must fully disclose the destructive nature of the firearm testing, the resulting loss, and its relevance and import to the jury. The State must examine appropriate witnesses in such a manner as to achieve this disclosure. In addition, Defendant remains entitled to cross-examination of the State's witnesses to further accomplish this remedy. *See Chouinard*, 1981-NMSC-096, ¶ 23 ("Where the loss is known prior to trial, there are two alternatives: Exclusion of all evidence which the lost evidence might have impeached, or admission with full disclosure of the loss and its relevance and import. The choice between these alternatives must be made by the trial court, depending on its assessment of materiality and prejudice. The fundamental interest at stake is assurance that justice is done, both to the defendant and to the public."); *see also id.* ¶ 25 ("Determination of materiality and prejudice must be made on a case-by-case basis. The importance of the lost evidence may be affected by the weight of other evidence presented, by the

opportunity to cross-examine, by the defendant's use of the loss in presenting the defense, and other considerations. The trial court is in the best position to evaluate these factors.").

CONCLUSION

IT IS THEREFORE ORDERED that Defendant Alec Baldwin's Motion to Dismiss the Indictment with Prejudice Based on the State's Destruction of Evidence is hereby DENIED.

IT IS HEREBY ORDERED.



MARY MARLOWE SOMMER
DISTRICT COURT JUDGE
DIVISION VIII

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date of acceptance for e-filing a true and correct copy of the foregoing was e-served on counsel registered for e-service in this matter as listed below.

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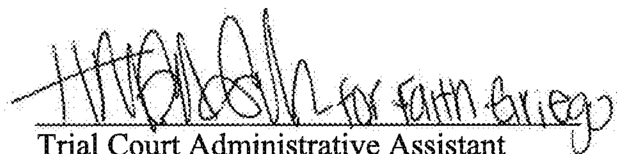

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