

Kathryn N. Nester (UT #13967)  
NESTER LEWIS PLLC  
40 S 600 E  
Salt Lake City, UT 84102  
Telephone: (801) 535-4375  
Email: kathy@nesterlewis.com

Richard G. Novak, *pro hac vice*  
RICHARD G. NOVAK, APLC  
65 North Raymond Avenue, Suite 320  
Pasadena, CA 91103  
Telephone: 626-578-1175  
Email: richard@rgnlaw.com

Michael N. Burt, *pro hac vice*  
LAW OFFICE OF MICHAEL BURT PC  
1000 Brannan Street Suite 400  
San Francisco, California 94103  
Telephone: 415-522-1508

Staci Visser (UT #14358)  
BROWN, BRADSHAW & MOFFAT  
422 N 300 W  
Salt Lake City, UT 84103  
Telephone: 801-532-5297  
Email: staci@brownbradshaw.com

*Attorneys for Tyler James Robinson*

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IN THE FOURTH JUDICIAL DISTRICT COURT, PROVO DEPARTMENT

IN AND FOR THE COUNTY OF UTAH, STATE OF UTAH

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STATE OF UTAH,  
  
Plaintiff,

vs.

TYLER JAMES ROBINSON,  
  
Defendant.

**DEFENDANT’S MOTION FOR AN  
ORDER PROHIBITING ANY FURTHER  
ALTERATION OR TESTING OF A  
BULLET JACKET FRAGMENT PENDING  
THE OUTCOME OF THIS MOTION, AND  
PERMITTING A DEFENSE EXPERT TO  
EXAMINE AND PHOTOGRAPH THIS  
EVIDENCE BEFORE IT IS FURTHER  
ALTERED OR DESTROYED, OR, IN THE  
ALTERNATIVE, PERMITTING EITHER  
DEFENSE EXPERT OBSERVATION OF  
ANY FURTHER ALTERATION OR  
TESTING OF THESE VIDENCE, OR  
VIDEO RECORDING OF SUCH  
ALTERATION AND TESTING, and  
MEMORANDUM IN SUPPORT**

Case No. 251403576

Honorable Tony F. Graf, Jr.

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## **INTRODUCTION**

Defendant, Tyler James Robinson, by and through undersigned counsel hereby moves the Court for a temporary order prohibiting the State and its agents from conducting any further testing of one bullet jacket fragment pending the outcome of this motion. Mr. Robinson further requests an order permitting a defense expert a meaningful opportunity to examine and photograph this evidence before it is further altered or destroyed, or, in the alternative, permitting either defense expert observation of any further alteration and testing of this evidence, or video recording of such alteration and testing.

This motion is made pursuant to Mr. Robinson's rights to a fair trial, to due process of law, to present a complete defense, to confront adverse witnesses, and to a reliable guilt and penalty determination under State and Federal constitutional provisions, including the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and to Article I, sections 7, 9, and 12 of the Utah Constitution. This motion is also made pursuant to Utah Rule of Criminal Procedure 16 and the Court's inherent authority to ensure a fair trial.

## **REQUESTED RELIEF**

By this motion, Mr. Robinson requests that this Court issue the following orders:

1. A temporary order prohibiting the state and its agents from conducting any further testing of one bullet jacket fragment pending the outcome of this motion;
2. An order permitting the defense a meaningful opportunity to examine and photograph this evidence before it is further altered or destroyed;
3. In the alternative, an order permitting either defense expert observation of any further alteration and testing of this evidence, or requiring video recording of such alteration and testing.

## STATEMENT OF FACTS

On November 4, 2025, the Court entered an order that provides in part:

[T]his Court ORDERS the Utah County Attorney's Office and any law enforcement agency involved in the investigation of this case to notify defense counsel prior to any potentially destructive testing and/or examination. If defense counsel does not object within 14 days of receiving notice, or defense counsel agrees to the potentially destructive testing and/or examination, the testing and/or examination may proceed. Testing and/or examination is potentially destructive only when it is likely to entirely consume a piece of evidence, or an extract from that piece of evidence, or is likely to change the character of a piece of evidence.

Dkt. 261 at 3.

On December 22, 2025, the State served on the defense a *State's Notice Of Intent To Conduct Non-Destructive Testing*, attached hereto as Exhibit 1. In this Notice, the State indicated its intent to conduct Virtual Comparison Microscopy (VCM) analysis on a bullet jacket fragment recovered at autopsy, to examine any markings that the rifle imparted to the fragment.<sup>1</sup> The Notice further indicated that “[w]hile the testing will not destroy or consume the fragments, it may alter their character.” Ex. 1, at 1.

According to the Notice, the FBI examiner who will conduct the testing has informed the State that to obtain a useful scan of the bullet jacket fragment, it may be necessary to fold back portions of the jacket fragment to allow the optical head to capture the surface of the jacket that contacted the firearm. Pliers or similar gripping tools may be used to fold back the jacket. While this process could leave marks on the surfaces of the fragment, the examiner will document those marks and, if possible, ensure that the marks do not interfere with the areas to be examined with

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<sup>1</sup> The Notice indicates that the State also intends to conduct metallurgical testing on at least one of four lead fragments recovered at autopsy. At least as described, this testing does not appear to involve any potentially destructive testing, or testing that would be likely to change the character of a piece of evidence.

VCM. Although this process may alter the shape of the jacket fragment, the examiner believes that the item should remain intact. The item is, nevertheless, fragile. Ex. 1, at 2.

The Notice further indicates that the FBI examiner informed the State that when he received the bullet jacket from the ATF it appeared that a small portion of the fragment was detached from the main portion. Given this, the FBI examiner stated that it is possible that additional pieces of the fragment may inadvertently become detached during the VCM analysis. Ex. 1, at 2-3. The Notice further indicates that it is the State's understanding that an ATF examiner who conducted a prior Light Comparison Microscopy (LCM) analysis of the bullet jacket fragment may have already folded back pieces of the bullet jacket fragment to expose its exterior surface. *Id.*

No explanation is offered in the Notice as to why it is necessary for the FBI to use pliers on the fragile sample to fold back portions of jacket fragment to expose the surface of the jacket that contacted the firearm when that process has already been performed by the ATF, with the result that the bullet fragment was capable of being examined but was apparently altered in the process.

The Notice, although it refers to an ATF lab report documenting that the ATF had conducted a prior Light Comparison Microscopy (LCM) analysis of the bullet jacket fragment, does not indicate the results of that examination. The ATF report, attached hereto as Exhibit 2, is dated September 17, 2025 and was disclosed to the defense on December 18, 2025. Ex. 2, at 2.

The ATF report indicates in part that,

Exhibit 6 consists of one (1) .30-caliber class deformed/damaged bullet jacket fragment (designed 6A) and four (4) lead fragments (designed 6B through 6E).

The Exhibit 6A bullet jacket fragment could not be identified or excluded as having been fired from the Exhibit 1 rifle based on an agreement of all

discernible class characteristics and neither sufficient agreement nor sufficient disagreement of individual characteristics. The result of the comparison was inconclusive. [Inconclusive].

*Firearms that produce general rifling characteristics similar to those observed on the Exhibit 6A bullet jacket fragment include numerous makes and models.*

The Exhibit 6B through 6E lead fragments are not suitable for microscopic comparison.

Ex 2, at 2.

This report clearly implies that Exhibit 6A *was* suitable for microscopic comparison, but that there was not “sufficient agreement nor sufficient disagreement of individual characteristics” to allow the examiner to identify or exclude the rifle in question. The report contains no hint that the individual characteristics became visible only after a set of pliers was used to fold back the jacket or that in this process a small portion of the fragment became detached, but according to the Notice that was what happened at the ATF.

On December 23, 2025, the defense inquired of the State via email whether the FBI laboratory was open to having a defense expert present during the FBI’s preparation and examination of the bullet fragment, and, if not, whether the laboratory was willing to video that process. On the same date, the state responded that the FBI’s “policies, which will not change for this case, do not allow a defense examiner to be present or video taping of the examination.” On the same date, the defense responded that given this stance, “we will have to file a motion with the court requesting appropriate relief.” The parties subsequently agreed that if the motion was filed by January 12, 2025, there would be no objection to the motion on timeliness grounds. The defense has retained a qualified expert to conduct an independent examination.

## ARGUMENT

### **I. THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS AND THEIR UTAH CONSTITUTIONAL COUNTERPARTS REQUIRE PRESERVATION AND FAIR ACCESS TO MATERIAL EVIDENCE.**

The Due Process Clause of the Fourteenth Amendment guarantees a defendant access to evidence “that is either material to the guilt of the defendant or relevant to the punishment to be imposed” so as to ensure that “defendants [are] afforded a meaningful opportunity to present a complete defense.” *California v. Trombetta*, 467 U.S. 479, 485 (1984). Evidence is “material” for this purpose if it “*might* be expected to play a significant role in the suspect's defense.” *Id.* at 488 (emphasis added). To meet this standard, “evidence must both possess an [apparent] exculpatory value ... and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.” *Id.* at 489.

*In Arizona v. Youngblood*, the Supreme Court recognized that the Due Process Clause “requires a different result when we deal with the failure of the State to preserve 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.” 488 U.S. 51, 57 (1988). The Court concluded that the failure to preserve “potentially useful evidence” does not violate due process “unless a criminal defendant can show bad faith on the part of the police.” *Id.* at 58. *See also Illinois v. Fisher*, 540 U.S. 544, 549 (2004) (“[T]he applicability of the bad-faith requirement in *Youngblood* depended not on the centrality of the contested evidence to the prosecution's case or the defendant's defense, but on the distinction between ‘material exculpatory’ evidence and ‘potentially useful’ evidence.”).

The bullet jacket fragment evidence in this case is material exculpatory evidence within the meaning of *Trombetta*, and not merely “potentially useful evidence” within the meaning of

*Youngblood* because here the ATF examination has already revealed that “firearms” (not just rifles) that produce general rifling characteristics similar to those observed on the Exhibit 6A bullet jacket fragment “include numerous makes and models”, and that an examination of individual characteristics did not reveal incriminating evidence. The evidence thus possesses an apparent exculpatory value within the meaning of *Trombetta*. And because the FBI is aware of these exonerating testing results, and is also aware by way of this motion that the defense considers the evidence to be exculpatory, any destruction or alteration of this evidence would be in bad faith. *Cf. Fisher*, 540 U.S. at 548 (“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...”).

Given the ATF test results, it is evident that an independent comparative analysis of any individual markings on the bullet fragments confirming that the individual characteristics do *not* match bullets test fired from the rifle the State seeks to connect to Mr. Robinson, or even confirming there are insufficient individual characteristics to include or exclude identification of a particular weapon an individualized match, would by itself, or in combination with the ATF results, raise a reasonable doubt as to his guilt, or at least raise a lingering doubt in any penalty phase, assuming the court found such expert testimony reliable enough to be admitted.<sup>2</sup> Because there is only one bullet fragment recovered in this case, if this evidence is altered to the point where it cannot be subject to independent testing, then by definition the defense cannot obtain comparable evidence by other reasonably available means. Once altered, the defense’s ability to

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<sup>2</sup> The defense reserves the right to challenge the admissibility of any bullet comparison evidence that inculpates Mr. Robinson and assumes the State reserves the same right with respect to any such comparative evidence that exculpates him.

challenge the conclusions of the State's expert is irreparably harmed and the reliability of the evidence will remain untested. *See, e.g., State v. Canady*, 559 S.E.2d 762, 768 (2002) ("On defendant's motion, the trial court ordered the State to turn over the test-fired bullets and "underlying data examinations.' The State was unable to locate the shells.... In the present case, defendant was not afforded the opportunity to rigorously test the State's firearms evidence, thus interfering with defendant's right to present a full defense. Therefore, we agree with defendant that the trial court erred in neither suppressing the testimony of the State's firearms expert nor ordering the State to retest the weapon."). *See also People v. Brown*, 541 N.Y.S.2d 146, 154 (N.Y. Sup. Ct. 1989) ("[C]learly, the defendant is prejudiced as a result of the destruction of the ballistics to the extent that he cannot examine the ballistics, since bullets have characteristics unto themselves, to set forth a defense that the bullets recovered and the bullets in the body of the deceased were not of the same make and kind."); *Id.* at 340 ("Here, the bullets are the most reliable evidence for the defense to make use of in an attempt to establish a defense with respect to a purported difference in ammunition. The destruction of the evidence precluded the defense from arguing that the .44 caliber bullets that were earlier received and later destroyed were not of the same make and kind as the .44 caliber bullets in the body of the deceased. The remedy to be applied by this Court is to preclude the use of testimony about the .44 caliber bullets found in the apartment that the defendant allegedly had access to."). *Cf. Strickland v. State*, No. 13-16-00701-CR, 2020 WL 373072, at \*18 (Tex. App. Jan. 23, 2020) (no due process violation where the state failed to retain photographs of bullet comparisons because "the actual ballistics evidence was preserved and available to Strickland and his expert to examine and conduct their own testing and evaluation.").

Especially in a capital case, there is an enhanced need for reliability in all phases of the case. *See Beck v. Alabama*, 447 U.S. 625, 638 (1980) (“To insure that the death penalty is indeed imposed on the basis of reason rather than caprice or emotion, we have invalidated procedural rules that tended to diminish the reliability of the sentencing determination. The same reasoning must apply to rules that diminish the reliability of the guilt determination.”) (internal quotation omitted); *Caldwell v. Mississippi*, 472 U.S. 320, 340 (1985) (invalidating a procedure that was “incompatible with the Eighth Amendment's heightened need for reliability in the determination that death is the appropriate punishment in a specific case.”) (internal quotation omitted). *See also, Gregg v. Georgia*, 428 U.S. 153, 187 (1976) (“When a defendant's life is at stake, the Court has been particularly sensitive to insure that every safeguard is observed.”). The death penalty was not in issue in either *Trombetta* or *Youngblood*, so how the Supreme Court would apply those cases in a capital case is an open question. Nevertheless, Mr. Robinson urges based on the Eighth Amendment cases cited above that the Court can and should find that alteration of the bullet fragment evidence in the unique circumstances of this case would violate the Sixth, Eighth and Fourteenth Amendments and Article 1, Sections 7, 9, and 12 of the Utah Constitution.

In *State v. Tiedemann*, the Utah Supreme Court was called on to determine whether the Utah Constitution's due process clause imposed the same requirements as its federal counterpart in cases where evidence is destroyed. 2007 UT 49, 162 P.3d 1106. The Court ultimately departed from the Supreme Court's approach in *Youngblood* as a matter of State due process and instead adopted an approach consonant with Rule 16 of the Utah Rules of Criminal Procedure, other state courts' interpretations of their own constitutions, and other due process analyses. *Id.* ¶ 44. This approach encompasses a threshold requirement that the defendant demonstrate a reasonable probability that the lost evidence would have been exculpatory. *Id.* If this threshold showing is

met, then a State due process claim is established and the court then considers two factors in order to assess the seriousness of the violation and to determine the appropriate remedy. *Id.* ¶¶ 44-45. See also *State v. DeJesus*, 2017 UT 22, ¶ 22, 395 P.3d 111; *State v. Mohamud*, 2017 UT 23, ¶ 12, 395 P.3d 133. The full *Tiedemann* standard is as follows:

In cases where a defendant has shown a reasonable probability that lost or destroyed evidence would be exculpatory, we find it necessary to require consideration of the following: (1) the reason for the destruction or loss of the evidence, including the degree of negligence or culpability on the part of the State; and (2) the degree of prejudice to the defendant in light of the materiality and importance of the missing evidence in the context of the case as a whole, including the strength of the remaining evidence.

2007 UT 49, ¶ 44.

*Tiedemann* instructs that “[t]he touchstone for the balancing process is fundamental fairness” and that “[i]f prejudice to the defendant...is extreme, fairness may require sanction even where there is no wrongdoing on the part of the State.” *Id.* ¶ 45.

In *State v. DeJesus*, the Court reaffirmed *Tiedemann* and responded to the suggestion of the concurrence that the Court should abandon the state constitutional basis of *Tiedemann* and rely instead on the inherent discretion of the trial court. 2017 UT 22, ¶ 22. The majority was emphatic that “[w]e will not invoke the doctrine of constitutional avoidance to essentially erase this court's previous conclusion that government loss or destruction of exculpatory evidence directly implicates due process.” *Id.* ¶ 35.

The *DeJesus* Court went on to hold that the district court erred by applying a more stringent “reasonable probability” standard than was required under the due process analysis articulated in *Tiedemann*, and that when the correct standard was applied, Ms. DeJesus's proffer as to what surveillance footage of her alleged assault on a prison guard may have shown and how the footage would have aided her defense met the threshold by establishing a reasonable

probability that the footage would have been exculpatory. 2017 UT 22, ¶ 55. The Utah Supreme Court concluded:

By so doing, Ms. DeJesus established that her due process right to a fair trial was violated. We accordingly must weigh the two *Tiedemann* factors to gauge the severity of the due process violation. And based on the negligence of the State in failing to preserve the footage and the crucial role that footage would have played in the case, we ultimately hold that dismissal is an appropriate remedy. We therefore reverse the district court's denial of Ms. DeJesus's motion to dismiss and remand for that court to enter an order of dismissal.

*Id.* The Court in *DeJesus* provided the following clarification of what a defendant must show in order to meet the *Tiedemann* “reasonable probability” standard:

Ultimately, in order to satisfy the reasonable probability standard in the lost evidence context, a defendant must make some proffer as to the lost evidence and its claimed benefit. So long as that proffer is not pure speculation or wholly incredible, the standard will be satisfied.

2017 UT 22, ¶ 39.

The *DeJesus* Court concluded that the district court erred because it had applied a standard that suggested that defendants must provide evidence that the lost or destroyed evidence was in fact exculpatory. “This is too high of a burden given both the reasonable probability standard articulated in *Tiedemann* and the fact that, in many lost evidence cases, there may be little extrinsic, corroborating evidence. Defendants will likely never be able to fully establish exactly what the evidence would have shown. Instead, all a defendant must show is that there is a reasonable probability the evidence would have been exculpatory.” 2017 UT 22, ¶ 40.

*DeJesus* also clarified that once the lax “reasonable probability” standard has been met, a state due process violation has been established, and that the other two factors listed in *Tiedemann* related only to the seriousness of the violation and the appropriate remedy. *Id.* ¶ 45.

Here, pursuant to the Court’s November 4, 2025 order, the questioned evidence has not yet been destroyed or altered, so the two *Tiedemann* factors relevant to assessing the seriousness

of the violation and the appropriate remedy for destruction of evidence are not yet at play. Even if they were, they are satisfied in this case where destruction or alteration of this evidence would be in bad faith because the FBI is clearly on notice of the exculpatory ATF testing results and the defense's desire to test this evidence, and where the state's present attempt to have this evidence subjected to three separate types of bullet or lead composition analysis indicates strongly the central role of the bullet evidence in this case and the fact that such extensive testing would not be taking place if the state believed that its other evidence in the case was strong enough to convict Mr. Robinson.

It is also important to stress that any attempt to assess the strength of the other evidence in this case before the bullet evidence has actually been destroyed or altered would be highly problematic at this early stage of the case given the fact that discovery is ongoing and the defense has not yet received all of the state's evidence, much less investigated its strength. *DeJesus* makes clear that the lax "reasonable probably" standard the Court adopted for the consideration of lost or destroyed standard was the same standard used in *Brady v. Maryland*, 373 U.S. 83 (1963), which required *on appeal* that the defendant demonstrate that presentation of undisclosed evidence could have affected the outcome of the proceedings. *See DeJesus*, 2017 UT 22, ¶ 27. Numerous federal cases have held that there is a critical distinction between applying that standard in a pretrial context as opposed to an appellate context. As explained in *United States v. Cloud*:

We agree with the district court that the Government's suppression prejudiced Cloud under the materiality standard applicable to withheld evidence discovered before or during trial. This analysis differs from the traditional *Brady* scenario in which the government's suppression is discovered after a trial and conviction. In the latter, more typical *Brady* scenario, suppressed evidence is deemed material where "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." [*Strickler v. Green*, 527 U.S. 263, 280 (1999) (citation

omitted)]. But, as we have observed, this standard “necessarily is a retrospective test, evaluating the strength of the evidence after trial has concluded.” *United States v. Olsen*, 704 F.3d 1172, 1183 (9th Cir. 2013). This analytical framework is a poor fit in cases like this one, where the suppression is discovered during trial and before a “look back” is possible.

102 F.4th 968, 979 (9th Cir. 2024); *see also id.* at 979 n. 70 (collecting cases and noting that “District courts have for decades recognized this distinct materiality analysis.”). Again, such a standard is especially a poor fit in this case where discovery is still ongoing and the defense is therefore not presently in a position to assess the strength of the other evidence in the case.

In sum, allowing the State to repeat a process that it has already used to examine a critical piece of evidence, with the result that the evidence was altered, without first granting the defense access to this evidence or adopting other remedial measures, creates precisely the type of unfairness and unreliability that *Tiedemann* was designed to prevent. Neither the need for the second examination, nor more importantly the need to manipulate the sample yet again with a pair of pliers, has been explained, and the FBI admits the fragment is “fragile”, has already been altered, and “it is possible that additional pieces of the fragment may inadvertently become detached during the VCM analysis.” Ex 1, at 3. Given the fragility of the sample and the results of the ATF’s using a set of pliers to manipulate the sample in the same way that the FBI would now like to repeat, the Court cannot safely conclude that further alteration of the sample is only “possible”. Rather, that result seems reasonably likely to happen.

If the bullet fragment is again altered to the point where no independent comparison is possible, than the degree of prejudice to the defendant is severe. The defense will be unable to independently verify conclusions, cross-examination will be unfairly limited, and the jury will hear unchallengeable expert testimony.

Lastly, if the bullet fragment is again altered to the point where no independent comparison is possible, no reasonable alternative evidence will remain to conduct the analysis. This imbalance in access to critical evidence will violate Mr. Robinson's state and federal constitutional rights to due process, to fundamental fairness, to present a defense, to confront and cross examine adverse witnesses, and to be free from prohibitions against cruel and unusual punishment.

## **II. UTAH RULE OF CRIMINAL PROCEDURE 16 REQUIRES DISCLOSURE AND MEANINGFUL ACCESS TO ALL PHYSICAL EVIDENCE.**

The *Tiedemann* Court also elaborated on the rule-based right afforded by URCP 16,<sup>3</sup> articulating, "It is a matter of clear Utah law that criminal defendants are entitled to information possessed by the State to aid in their defense. Rule 16 of the Utah Rules of Criminal Procedure imposes broad obligations on prosecutors to produce such information or make it available to a defendant." 2007 UT 49, ¶ 41. The *Tiedemann* Court cited "numerous other instances" where the Utah Supreme Court enforced Rule 16's requirements, such as its decision in *State v. Knight*:

The prosecutor's good faith should not have had any impact on the trial court's determination of whether the prosecutor had violated his discovery duties.... [T]he prosecutor's good faith ignorance does not excuse non-disclosure. If any weight were given to good faith ignorance, it would only encourage after-the-fact justifications for nondisclosure.

*Id.* (quoting *State v. Knight*, 734 P.2d 913, 918 n. 5 (Utah 1987)).

Here, early on in this case, Mr. Robinson filed a *Formal Request for Discovery Pursuant to URCP 16 and Request For 404(B) Notice* (Dkt. 61), requesting production of several categories of evidence, including all "physical and electronic evidence" pursuant to URCP 16(a)(1)(C), and "the underlying data, research, and information upon which [any] expert relied

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<sup>3</sup> Utah rules of procedure and evidence are created and adopted pursuant to the statutory authority granted to the Utah Supreme Court in Utah Code § 78A-3-103(1).

in forming his or her opinion including any books, papers, documents, data, photographs, [or] tangible objects[.]” Dkt. 61, at 3, 10.

It is self-evident that Mr. Robinson’s right to the production and independent testing of physical evidence will be compromised if the State alters or destroys the evidence before the defense is given the opportunity to independently examine and test it. *See State v. Alvarez*, 2006 UT 61, ¶ 36, 147 P.3d 425 (“The administration of justice...require(s) convenient access to evidence where this access can be provided in a reasonable fashion.”).

In *DeJesus*, the Court clarified that “[i]n referencing rule 16, we did not ground the *Tiedemann* test in our rules of criminal procedure. We instead pointed lower courts to ‘[o]ur approach under rule 16’ where ‘the culpability or bad faith of the state should only be one consideration, not a bright line test [unlike *Youngblood*], as a matter of [state] due process.’ Rule 16, therefore, does not govern cases of lost or destroyed evidence. It merely provides a helpful framework for applying the *Tiedemann* test.” 2017 UT 22, ¶ 32. In this case, however, the evidence in question has not yet been lost or destroyed. It therefore remains subject to the strictures of Rule 16, which would clearly be violated if the State alters physical evidence before the defense has the opportunity to either examine and test it or be provide with other means to secure Mr. Robinson’s rights.

### **III. MR. ROBINSON OFFERS REASONABLE METHODS TO PROTECT HIS CONSTITUTIONAL AND STATUTORY RIGHTS.**

Although the issue raised in this motion has not yet been raised in an appellate case in the specific context of destructive comparative bullet fragment testing, it is a common one in cases involving DNA and other forensic evidence. In that context, the American Bar Association’s Standards for Criminal Justice: DNA Evidence (3<sup>rd</sup> Ed. 2007) DNA Standards, Standard 16-3.4(e) (CONSUMPTIVE TESTING) provides:

If a motion objecting to consumptive testing is filed, the court should consider ordering procedures that would permit an independent evaluation of the analysis, including but not limited to the presence of an expert representing the moving party during evidence preparation and testing, and videotaping or photographing the preparation and testing.

*Id.* at 75-76.<sup>4</sup>

The Commentary to this Standard contains a helpful summary of the then-existing caselaw on this topic as it relates to DNA and other types of forensic evidence:

This procedure may be constitutionally required under certain circumstances. For example, in commenting on the due process issues raised by destructive testing, the Colorado Supreme Court wrote: "[I]t may be incumbent on the state to contact the defendant to determine whether he wishes his expert to be present during the tests." [*People v. Gomez*, 596 P.2d 1192, 1197 (Colo. 1979) (heroin)]. In a later case, *People v. Garries*, [645 P.2d 1306, 1309-10 (Colo. 1982)] the Court suppressed bloodstain evidence because it was destroyed in testing. The state had neither photographed the test results nor provided the defense with the opportunity have its own expert present during analysis. As *Garries* indicates, there may be other ways to satisfy due process in this context - in lieu of the presence of defense experts. In *State v. Thomas* [421 S.E.2d 227, 234 (W. Va. 1992)] the West Virginia Supreme Court ruled that if the prosecution conducts complicated tests (there an electrophoretic blood test) that consume all the tested substance, the state must "preserve as much documentation [of the test] as is reasonably possible to allow for a full and fair examination of the results by a defendant and his experts."

*Id.* at 77, also citing *Commonwealth v. Gliniewicz*, 500 N.E.2d 1324, 1327 (Mass. 1986) ("[T]he defendants received no notice of the impending tests, and thus were not able to have their own expert present to observe and potentially to refute the subjective aspects of the [blood test]."); *State v. Gaddis*, 530 S.W.2d 64, 69 (Tenn. 1975) ("When such a situation arises, good faith demands that no test or analysis be made except by agreement between the District Attorney and defense counsel, or until such time as defense counsel may arrange to have his own expert

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<sup>4</sup> Available at: [https://www.americanbar.org/content/dam/aba/publications/criminal\\_justice\\_standards/dna\\_evidence.pdf](https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/dna_evidence.pdf).

present at the test."); *State v. Wright*, 557 P.2d 1, 7 (Wash. 1976) ("[B]efore any testing or disposition of evidence occurs, the defendant should be given notice of the type of evidence involved and its planned disposition.").

Following the publication of Standard 16-3.4(e), the Colorado Supreme Court held in *People v. Wartena*:

Acting to avoid or mitigate a failure to preserve evidence, the court may order that evidence cannot be destroyed, or may permit the consumptive testing of evidence. [Citation omitted]. Except in unusual circumstances, this authority does not extend to dictating procedures to a particular laboratory or ordering the prosecution to pay for a defense expert. Nonetheless, the court may exercise its authority over the evidence by prohibiting testing that does not comply with procedures adopted by the court to permit independent evaluation of evidence.

We have not previously addressed whether, in the exercise of its authority to set appropriate procedures, the court may require videotaping of testing procedures as a condition of permitting consumptive testing. The American Bar Association recently addressed the duty to preserve evidence in consumptive testing situations, noting in the Criminal Justice Section Standards on DNA Evidence that courts should consider ordering procedures such as videotaping that would allow for independent evaluation. We agree with the recommendation of the American Bar Association and adopt Standard 3.4(e).

156 P.3d 469, 473 (Colo. 2007) (footnote omitted).

In the absence of controlling Utah precedent, Standard 16-3.4(e) and the cases cited above provide the Court with helpful guidance in assessing whether the remedies being suggested by Mr. Robinson to protect his constitutional and statutory rights are reasonable. The FBI is no stranger to those remedies and at least one of them should be adopted here. *See, e.g. United States v. Harpham*, No. 2:11-CR-00042-JLQ, 2015 WL 4623717, at \*3 (E.D. Wash. Aug. 3, 2015) ("[T]he FBI constructed and detonated similarly-constructed IEDs to demonstrate that Harpham's would have functioned properly. However, the Government conducted this test in Virginia without notice to or presence of the defense. Therefore, on September 2, 2011 the court ordered that by September

8, 2011 the Government re-construct three IED explosion tests with the defense's expert present (ECF No. 197).”).

**CONCLUSION**

Based upon the foregoing, the Court should order relief consistent with Mr. Robinson’s request.

DATED this 9<sup>th</sup> day of January, 2026.

Respectfully submitted,

/s/ Michael N. Burt  
Michael N. Burt

/s/ Kathryn N. Nestor  
Kathryn N. Nestor

/s/ Richard G. Novak  
Richard G. Novak

/s/ Staci Visser  
Staci Visser

*Attorneys for Defendant, Tyler James Robinson*

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing was served via the Court's electronic filing system on the 9th day of January, 2026, which served all attorneys of record.

*/s/ Staci Visser* \_\_\_\_\_

# Exhibit 1

JEFFREY S. GRAY # 5852  
Utah County Attorney  
CHAD E. GRUNANDER # 9968  
RYAN MCBRIDE # 13079  
LAUREN HUNT # 14682  
DAVID STURGILL # 7995  
CHRISTOPHER D. BALLARD # 8497  
Deputy Utah County Attorneys  
100 East Center, Suite 2100  
Provo, Utah 84606  
Telephone: (801) 851-8026  
Email: dcourt@utahcounty.gov

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IN THE FOURTH JUDICIAL DISTRICT COURT  
UTAH COUNTY, STATE OF UTAH

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STATE OF UTAH,  
Plaintiff,

v.

TYLER JAMES ROBINSON,  
Defendant.

**STATE'S NOTICE OF INTENT TO  
CONDUCT NON-DESTRUCTIVE  
TESTING**

Case No. 251403576

Judge Tony F. Graf, Jr.

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The State hereby notifies Defendant of its intent to conduct forensic testing on a bullet jacket fragment and lead fragments.

One bullet jacket fragment and four lead fragments were recovered from the body of Charlie Kirk during his autopsy. The FBI lab intends to conduct forensic testing on the bullet jacket fragment and at least one of the lead fragments. While the testing will not destroy or consume the fragments, it may alter their character.

**Bullet Jacket Fragment.** The FBI lab intends to conduct Virtual Comparison Microscopy (VCM) analysis on the bullet jacket fragment to examine any markings

that the rifle imparted to the fragment. This analysis is non-destructive and employs 3D technology to capture multiple scans of the object.<sup>1</sup> The object is placed on a platform for scanning. The scanning instrument's optical head does not contact the item. The scan data will be preserved for future use, allowing any generated scan files to be produced for independent VCM examination and analysis.

The examiner has informed the State that to obtain a useful scan of the bullet jacket fragment, it may be necessary to fold back portions of the jacket fragment to allow the optical head to capture the surface of the jacket that contacted the rifle. Pliers or similar gripping tools may be used to fold back the jacket. While this process could leave marks on the surfaces of the fragment, the examiner will document those marks and, if possible, ensure that the marks do not interfere with the areas to be examined with VCM. Although this process may alter the shape of the jacket fragment, the examiner believes that the item should remain intact. The item is, nevertheless, fragile.

The Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) previously conducted Light Comparison Microscopy (LCM) analysis of the bullet jacket fragment. *See* September 17, 2025, ATF Lab Report at 2, “2025-W-000401(1) Firearms report\_STAMPED.pdf” (disclosed on December 18, 2025, as Bates No. 011543). The ATF lab described the item as a “.30-caliber class deformed/damaged bullet jacket fragment.” *See id.* at 2. It is the State's understanding that the examiner

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<sup>1</sup> The description included here represents the State's understanding of VCM. If an evidentiary hearing is necessary, experts will provide greater explanation.

who conducted this prior LCM analysis may have already folded back pieces of the bullet jacket fragment to expose its exterior surface.

After the ATF examined the bullet jacket fragment, it sent the fragment to the FBI lab. An examiner at the FBI lab noted that when the FBI lab received the bullet jacket fragment, it appeared that a small portion of the fragment was detached from the main portion. Given this, the FBI examiner stated that it is possible that additional pieces of the fragment may inadvertently become detached during the VCM analysis.

**Lead fragments.** The State also intends to conduct metallurgical testing on at least one of the recovered lead fragments. This testing involves taking a small scraping from the fragment. The examiner will document the area from which the scraping is taken. The examiner will not take a scraping from an area that would affect additional ballistics analysis through either VCM or LCM analysis.

The metallurgical testing will not prevent an independent expert from conducting the same analysis by taking a scraping from another area of the recovered bullet fragment(s).

Pursuant to the Court's November 4, 2025, order regarding evidence preservation, Defendant has fourteen days to object.

Dated December 22, 2025.

Utah County Attorney's Office  
s/ Christopher D. Ballard  
Christopher D. Ballard  
Deputy Utah County Attorney

Counsel for Plaintiff

## CERTIFICATE OF SERVICE

I certify that on December 22, 2025, I served via email a copy of the foregoing **STATE'S NOTICE OF INTENT TO CONDUCT NON-DESTRUCTIVE TESTING** on defense counsel as follows, and filed a Certificate of Service through the Court's electronic filing system.

Kathy Nester  
[kathy@nesterlewis.com](mailto:kathy@nesterlewis.com)

Richard Novack  
[richard@rgnlaw.com](mailto:richard@rgnlaw.com)

Michael Burt  
[mb@michaelburtlaw.com](mailto:mb@michaelburtlaw.com)

Staci Visser  
[staci@brownbradshaw.com](mailto:staci@brownbradshaw.com)

s/ Christopher D. Ballard

# Exhibit 2



U. S. Department of Justice

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES  
Forensic Science Laboratory – Washington  
6000 Ammendale Road  
Beltsville, MD 20705  
Phone: (301) 623-0980

# Laboratory Report

ANAB ISO/IEC 17025:2017 Accredited  
Forensic Testing Laboratory

Special Agent Derek Thorstenson  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
4246 S. Riverboat Road  
Salt Lake City, UT 84123

**Date of Report:** September 17, 2025  
**Case Number:** 2025-W-000401  
**Submission(s):** 1  
**Reference:** 25-24969  
**Title:** Homicide of Charlie Kirk  
**Type of Exam:** Firearms

## EXHIBITS

### Lab # – Agency #

- 1 (1) One (1) Mauser, model 98, 30-06 Springfield caliber rifle bearing serial number 8863 with an optical accessory
- 2 (2) One (1) 30-06 Springfield caliber cartridge case
- 3 (3) One (1) 30-06 Springfield caliber cartridge
- 4 (4) One (1) 30-06 Springfield caliber cartridge
- 5 (5) One (1) 30-06 Springfield caliber cartridge
- 6 (6) One (1) bullet jacket fragment and four (4) lead fragments (designated 6A through 6E)

## RESULTS OF EXAMINATION

This report refers to exhibits by Lab Number. The following results only apply to the items tested.

The Exhibit 1 rifle was test fired and found to be in operable condition. The test fires were designated as Exhibit 1.11.

Exhibit 2 consists of one (1) 30-06 Springfield caliber fired cartridge case bearing a Remington headstamp.

The Exhibit 2 cartridge case was identified as having been fired in the Exhibit 1 rifle. [Source identification]

Exhibit 3 through 5 consists of three (3) 30-06 Springfield caliber unfired cartridges each bearing a Remington headstamp.

The Exhibit 2 cartridge case and Exhibit 3 through 5 cartridges were examined for the presence of comparable toolmarks. Toolmarks were located on the exterior of the Exhibit 2 cartridge case and Exhibit 3 cartridges (scribe marks) that are consistent with being produced by engraving and/or rotary cutting tips commonly found

installed in handheld rotary tools (such as a Dremel tool). These toolmarks contain marks of value for comparison if a suspect tool is located.

Exhibit 6 consists of one (1) .30-caliber class deformed/damaged bullet jacket fragment (designated 6A) and four (4) lead fragments (designated 6B through 6E).

The Exhibit 6A bullet jacket fragment could not be identified or excluded as having been fired from the Exhibit 1 rifle based on an agreement of all discernible class characteristics and neither sufficient agreement nor sufficient disagreement of individual characteristics. The result of the comparison was inconclusive.  
[Inconclusive]

Firearms that produce general rifling characteristics similar to those observed on the Exhibit 6A bullet jacket fragment include numerous makes and models.

The Exhibit 6B through 6E lead fragments are not suitable for microscopic comparison.

See the Appendix of this report for further context regarding the conclusions listed above.


*These conclusions conform with the relevant Department of Justice policy on Uniform Language for Testimony and Reports available at [www.justice.gov](http://www.justice.gov).*

The following techniques were used in the examination of one or more of the exhibits described above: microscopic comparison, visual/physical examination, and product (make/model) determination.

**DISPOSITION OF EVIDENCE**


Laboratory produced specimens (Exhibit 1.11) have been packaged with the submitted evidence, and all items will be returned to the contributor once all laboratory examinations are completed.

Examiner:

 Digitally signed by  
SAMANTHA  
KARNER  
Date: 2025.09.17  
16:11:16 -04'00'


Samantha E.A. Karner  
Firearm and Toolmark Examiner

Technical Reviewer:

 Digitally signed  
by SEAN TOKAY  
Date: 2025.09.17  
16:23:17 -04'00'

Sean T. Tokay  
Firearm and Toolmark Examiner

Administrative Reviewer:

 Digitally signed by  
JENNIFER  
OWENS  
Date: 2025.09.17  
16:30:32 -04'00'

Jennifer J. Owens      Date of Issue  
Chief, Firearms & Identification Section

## **APPENDIX**

An examiner may provide any of the following conclusions. These descriptions are meant to provide context to the conclusions reached in this report. Not every type of conclusion may be represented or applicable in every case.

### **Source identification** (i.e., identified)

‘Source identification’ is an examiner’s conclusion that two toolmarks originated from the same source. This conclusion is an examiner’s opinion that all observed class characteristics are in agreement and the quality and quantity of corresponding individual characteristics is such that the examiner would not expect to find that same combination of individual characteristics repeated in another source and has found insufficient disagreement of individual characteristics to conclude they originated from different sources.

### **Source exclusion** (i.e., excluded)

‘Source exclusion’ is an examiner’s conclusion that two toolmarks did not originate from the same source. The basis for a ‘source exclusion’ conclusion is an examiner’s opinion that the observed class and/or individual characteristics provide extremely strong support for the proposition that the two toolmarks came from different sources and extremely weak or no support for the proposition that the two toolmarks came from the same source.

### **Inconclusive**

‘Inconclusive’ is an examiner’s conclusion that all observed class characteristics are in agreement but there is insufficient quality and/or quantity of corresponding individual characteristics such that the examiner is unable to identify or exclude the two toolmarks as having originated from the same source. The basis for an ‘inconclusive’ conclusion is an examiner’s opinion that there is an insufficient quality and/or quantity of individual characteristics to identify or exclude. Reasons for an ‘inconclusive’ conclusion include the presence of microscopic similarity that is insufficient to form the conclusion of ‘source identification;’ a lack of any observed microscopic similarity; or microscopic dissimilarity that is insufficient to form the conclusion of ‘source exclusion.’