

STATE OF MAINE  
WASHINGTON, ss.

SUPERIOR COURT  
CRIMINAL ACTION  
DOCKET NOS. CR-22-20120  
CR-22-20121

STATE OF MAINE )  
 )  
 v. )  
 )  
 KAILIE BRACKETT & )  
 DONNELL DANA, )  
 Defendants )

STATE'S MOTION  
FOR DISCOVERY  
M.R.U. Crim.P. 16A(2)(A)(iii) & (iv)

The State of Maine, by and through Assistant Attorneys General Donald W. Macomber and Megan L. Elam, moves this Court to Order that the defendants listed above be ordered to be footprinted and to pose for photographs.

In support of this motion the State represents that partial bloody footprints were left on a carpeted stairway at the scene of the crime. The Maine State Police has consulted with an expert, Dr. Michael Nirenberg, to attempt to identify who may have left the footprints. Dr. Nirenberg has indicated that he will require footprint exemplars and scaled photographs of the defendants to conduct such a comparison (see attached protocol).

The Fourth Amendment allows the court to order a defendant to submit to fingerprinting (*Davis v. Mississippi*, 394 U.S. 721 (1969); *United States v. Watkins*, 880 F.3d 1221 (11<sup>th</sup> Cir. 2018) and to having photographs taken (*United States v. Holland*, 438 F.2d 887 (6<sup>th</sup> Cir. 1971); *State v. McDowell*, 271 S.E.2d 286 (N.C. 1980)); See generally, 1 LaFare, *Search & Seizure*, § 2.6(a) at 901-909 (6<sup>th</sup> ed. 2020).

Dated: December 12, 2022

/s/ Donald W. Macomber  
DONALD W. MACOMBER  
Assistant Attorney General  
Maine State Bar Number: 6883  
Criminal Division

DEC 15 '22 PM 12:05  
WASHINGTON CT

## **Dr. Michael Nirenberg footprint comparison request.**

Please have the Court grant permission for law enforcement to obtain the following from each suspect:

Medical records of the suspects – all doctors, and podiatrist or orthopedic surgeon if applicable.

### **Photographs (do your best to include a scale/ruler in all photos)**

Photographs of the suspect's feet and full body with the pant rolled up to the knees and barefoot (without socks).

#### **Suspect standing:**

- 1) Full body photos of suspect standing – front, back and each side
- 2) Photos of the back of the heels from behind – straight on and at approx. 45 degree angle
- 3) Photos of front of the feet from the front – straight on at approx. 45 degree angle
- 4) Photos from each the side of each foot – strong on at approx. 45 degree angle

#### **Suspect Seated with knee straight, held up**

- 5) Bottom of right foot – straight on. with ruler with clear scale held beside foot
- 6) Bottom of left foot -- straight on, with ruler with clear scale held beside foot

#### **Outline of each foot**

Have suspect stand and keep pen straight, perpendicular to paper, and trace each foot. **Do this 3 times for each foot.**

Instructions: Use a high resolution megapixel camera and set the camera to RAW [not JPEG]. Send TIFF size images. Do not use a phone camera as the resolution will be lower.

#### **D. Footprints**

**First, with socks on the suspect's feet (if you recovered bloody socks, purchase the same brand/style or similar)**

**(Label these Footprints as SOCK CLAD)**

- 1) Suspect Standing on a long roll of butcher paper. Need 3 sets feet of suspect standing (**identify these with a marker as standing**)
- 2) Suspect Walking (**identify these with a marker next to each as walking**). Get multiple footprints – 8 to 10 of each foot -- of the suspect walking.

**Next, bare foot (Identify as bare footprints)**

- 1) Suspect Standing on a long roll of butcher paper. Need 3 sets feet of suspect standing (**identify these as standing**)
- 2) Suspect Walking (**identify these as walking**). Get multiple footprints -- 8 to 10 of each foot -- of the suspect walking.

Instructions: Use an approximately 20-foot-long sheet of white butcher paper, black printers ink, and a roller. The white butcher paper is securely taped to the floor and a marker is placed on the wall at the height of the suspect's eyes (eye level).

The suspect is seated in a chair at one end of the paper roll. The suspect's feet should be comprehensively inked with the roller and black printer's ink. **Ink the ENTIRE bottom of the foot – including ALL the toes.**

The suspect would then be asked to stand on the paper roll – hence, creating standing footprints and they are marked by you as standing footprints.

The suspect is then told to walk across the paper toward the marker on the wall and told to look toward this marker on the wall at around his eye height.

**Three separate sequences should be taken**

I would have someone video tape the process of making the footprints in case this is needed at court and send me the tape to review.

Let me know if you have questions.