

**MAINE SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT**

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**Law Court Docket No. Was-24-231**

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**State of Maine**  
*Appellee*

**v.**

**Kailie Brackett**  
*Defendant/Appellant*

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On appeal from a conviction in the Washington County Superior Court

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***REPLY BRIEF FOR APPELLANT***

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## TABLE OF CONTENTS

Table of Contents.....	2
Table of Authorities.....	3
Argument.....	4
I. ADMISSION OF SIX GRUESOME AUTOPSY PHOTOGRAPHS, ALL LARGELY DEPICTING THE SAME INJURIES, WAS NOT THE LEAST PREJUDICIAL MEANS TO PROVE ELEMENTS THAT THE PROSECUTOR ADMITTED WERE NOT IN DISPUTE AND THEIR CUMULATIVE EFFECT WAS UNFAIRLY PREJUDICIAL.....	4
II. THE PROSECUTOR’S MISSTATMENTS IN HER CLOSING WERE NOT HARMLESS BECAUSE THEY ATTACKED THE TWO MOST IMPORTANT ISSUES IN THE CASE: WHO MADE THE FOOTPRINTS AT THE SCENE AND KAILIE’S CREDIBILITY.....	5
III. THE TRIAL JUDGE IMPROPERLY DENIED MS. BRACKETT’S MOTIONS FOR JUDGMENT OF ACQUITTAL BECAUSE THE EVIDENCE WAS SIMPLY INSUFFICIENT TO DEMONSTRATE KAILIE’S GUILT BEYOND REASONABLE DOUBT.....	8
Conclusion.....	16
Certificate of Service.....	17

## **TABLE OF AUTHORITIES**

### **Maine Cases:**

<i>Ginn v. Penobscot Co.</i> , 334 A.2d 874, 880 (Me. 1975).....	15-16
<i>State v. Crossman</i> , 2002 ME 28, ¶ 10, 790 A.2d 603, 606.....	15
<i>State v. Dolloff</i> , 2012 ME 130, ¶ 37, 58 A.3d 1032, 1044.....	5-6, 8
<i>State v. Lockhart</i> , 2003 ME 108, ¶ 46.....	4-5
<i>State v. Mason</i> , 528 A.2d 1259, 1262 (Me. 1987).....	7
<i>State v. Pabon</i> , 2011 ME 100, ¶ 35, 28 A.3d 1147.....	5-6
<i>State v. Schmidt</i> , 2008 ME 151, ¶ 16, 957 A.2d 80, 85.....	7

## **ARGUMENT**

### **I. ADMISSION OF SIX GRUESOME AUTOPSY PHOTOGRAPHS, ALL LARGELY DEPICTING THE SAME INJURIES, WAS NOT THE LEAST PREJUDICIAL MEANS TO PROVE ELEMENTS THAT THE PROSECUTOR ADMITTED WERE NOT IN DISPUTE AND THEIR CUMULATIVE EFFECT WAS UNFAIRLY PREJUDICIAL.**

The State claims admission of all six admittedly gruesome photographs of Kim's corpse was proper because it was the least prejudicial means of presenting what it now deems "critical evidence," [State's Br. 25], despite the trial prosecutor's repeated claim at trial that depraved indifference was not in dispute. [Tr. VII: 15-16, 18]. Even assuming, *arguendo*, that the State should be permitted to admit a photograph to show Kim's injuries because the autopsy diagrams were inadequate, it was an abuse of discretion for the lower court to allow the State to admit six such photographs – all that depict the same wounds, most with visible blood and tissue. [RA 119]. For example, State's exhibit 117 depicts well over fifty wounds, many that are clearly deep, with bloody tissue exposed. [RA 117]. Similarly, State's exhibits 111, 113, and 114 show most of those same stab wounds, just from a different angle. [RA 114-116]. The cumulative effect of this was surely unfairly prejudicial and admitted for the purpose of inflaming the jury.

The State further claims that the trial judge "took steps to mitigate the [potential] prejudicial effect of the photographs," by warning the jurors of the graphic nature of the photographs prior to admission. [State's Br. 26]. In so arguing,

the State cites *State v. Lockhart*, in which this Court noted ameliorative steps that a trial judge could take to mitigate the prejudicial effect of showing such gruesome photographs. *State v. Lockhart*, 2003 ME 108, ¶ 46. None of those steps were taken in this case.

Finally, the State claims that because the jury was deadlocked as to the murder charge against Mr. Dana, the jury could not have been inappropriately swayed by admission of the gruesome photographs. [State's Br. 27]. Such a statement is impermissible speculation as to the reasons for Mr. Dana's verdict, especially where, as here, Dr. Nirenberg's opinion excluded Mr. Dana as a source of the bloody, sock-clad footprint from the crime scene. Thus, because the cumulative effect of the six gruesome autopsy photographs unfairly prejudiced Kailie, this Court must reverse her conviction.

**II. THE PROSECUTOR'S MISSTATEMENTS IN HER CLOSING WERE NOT HARMLESS BECAUSE THEY ATTACKED THE TWO MOST IMPORTANT ISSUES IN THE CASE: WHO MADE THE FOOTPRINTS AT THE SCENE AND KAILIE'S CREDIBILITY.**

The State argues that even if the trial prosecutor committed error in the closing argument, such errors were harmless. [State's Br. 28]. As previously argued, the trial prosecutor's misstatements in her closing argument constituted plain error. [Brackett's Br. 49-52]. If the first two elements of the obvious error test are met, this Court must consider whether Kailie has "demonstrated a reasonable probability that

the error affected her substantial rights.” *State v. Dolloff*, 2012 ME 130, ¶ 37, 58 A.3d 1032, 1044 (*quoting State v. Pabon*, 2011 ME 100, ¶ 35, 28 A.3d 1147). “[A]n error affects a criminal defendant's substantial rights if the error was sufficiently prejudicial to have affected the outcome of the proceeding.” *Id.* ¶ 34.

The State cursorily argues that any error in the trial prosecutor’s closing was harmless because the crux of the prosecutor’s closing argument – that Kailie made the bloody footprints at the scene – was fairly based on evidence and therefore any misstatement about the level of support on which Dr. Nirenberg based his opinion was of no consequence. [State’s Br. 30]. However, this is not a case where the misstated facts played a small role in the case. Rather, Dr. Nirenberg’s testimony and his ultimate opinion were central to the prosecution’s case, especially given the paucity of any other direct evidence tying Kailie to Kim’s murder. To inaccurately equate the same level of evidentiary support on which Dr. Nirenberg based his opinion in excluding Mr. Dana and including Kailie, when the levels of support as testified by Dr. Nirenberg were a “big jump,” [Tr. II: 231, 234-235], significantly affected the fairness and integrity of Kailie’s trial and warrant reversal.

Similarly, the prosecutor’s misstatements in her closing about the cell phone tower information significantly affected Kailie’s trial because it directly attacked Kailie’s credibility and her testimony that she and Kim coincidentally met up at the Farmer’s Union and then traveled to Eastport together on April 20, 2022. [Tr. VI:

21]. This Court has recognized the importance of evidence impeaching the credibility of a principal witness. *State v. Mason*, 528 A.2d 1259, 1262 (Me. 1987). It is not proper for a prosecutor, who is “cloaked with the authority of the State,” to comment on the credibility of a witness. *State v. Schmidt*, 2008 ME 151, ¶ 16, 957 A.2d 80, 85 (quotation marks omitted).

Here, although the prosecutor did not directly state that Kailie was untruthful, her misstatements about the cell phone tower pings and that Kailie and Kim could not have been at the Farmer’s Union together, urged the jury to disbelieve Kailie’s version of events, using inaccurate facts. Neither Kim nor Kailie’s phones pinged at the Farmer’s Union – that Kailie was there was established by a receipt for purchased goods. [Tr. IV: 195-196; State’s Ex. 174]. Therefore, not only did the prosecutor misstate the time in which Kim’s phone first pinged in Eastport – 4:20, as claimed by the prosecutor [Tr. VII: 24], with 4:22:42 as shown by the documentary evidence [State’s Ex. 173, slides 11-12], but her misstatement encouraged an improper inference – that Kailie and Kim were not together at the Farmer’s Union. In fact, the prosecutor doubled down on this theory stating: “Now, Defendant Brackett tried to convince you that she and Kim were together at the Farmer’s Union because their cell phones connected with the same cell phone tower. But that just didn’t happen.” [Tr. VII: 23-24]. This was of great importance to the prosecution’s case because had Kim and Kailie been together at the Farmer’s Union and traveled together to

Eastport, it destroyed the State's theory that Kailie was somehow angry with Kim and making statements to that effect while at the Farmer's Union, and ultimately killed her over some disagreement. These misstatements alone affected Kailie's substantial rights because they went to the heart of the prosecution's case, and the alleged motive, and were thus prejudicial enough to have affected the outcome of the proceeding. *Dolloff*, 2012 ME 130, ¶ 34. When viewed with the prosecutor's other misstatements regarding the opinion of Dr. Nirenberg and the footprint evidence, it is clear that Kailie's conviction should be reversed.

### **III. THE TRIAL JUDGE IMPROPERLY DENIED MS. BRACKETT'S MOTIONS FOR JUDGMENT OF ACQUITTAL BECAUSE THE EVIDENCE WAS SIMPLY INSUFFICIENT TO DEMONSTRATE KAILIE'S GUILT BEYOND REASONABLE DOUBT.**

In arguing that there was sufficient evidence to convict Kailie, the State inflates the level of evidence submitted to the jury and presents this Court with inaccurate and misleading information in an effort to bolster the case against Kailie. Specifically:

- The State blatantly misstates the video evidence by claiming that when Ms. Brackett was seen at the Family Dollar store in Eastport on April 21, she was **“wearing the same jacket as the person captured walking from Kim’s apart[ment] and up the ATV trail earlier that morning.”** [State’s Br. 16]. Under any viewing of the video evidence, it is evident this is false. The person walking in the area of Kim’s apartment at 8:07 a.m. on April 21, 2022, was



wearing a black jacket and a black baseball cap. [State's Ex. 170D]. In the video of Ms. Brackett making the ATM withdrawal from Bangor Savings Bank and purchases at the Family Dollar Store on the afternoon of April 21, she was clearly wearing a multi-colored camouflage jacket and a blue and light-colored mesh hat, and what appears to be a standard black mask—with no “Cheshire Cat” or “Joker” image on it. [State's Ex. 167, 168, 171, 201]. Furthermore, nowhere in the testimony cited by the State does the witness say Ms. Brackett is wearing the same jacket at the Family Dollar store as the person observed near Kim's apartment on April 21, 2022, at 8:07 a.m. [See Tr. IV: 171-172].

- The State claims that Melissa Dana saw Kailie parked on the side of the road on April 18, 2022, and that she was wearing a face mask with a “Joker” smile on it. [State's Br. 12]. The State then claimed that Kailie was seen that same night on video on Melissa Martin's porch wearing the same mask and jacket. [State's Br. 12].
  - Ms. Dana was asked about the specific date of her observation by the prosecutor, if she saw Kailie in her car occurred on April 18, 2022. Ms. Dana was unable to confirm that date. In fact, she stated that, in relation to the date of Kim's death on April 21, 2022, that her observation occurred “a week before maybe.” Ms. Dana in no way adopted the

prosecutor's date of April 18, 2022. [Tr. III: 225-228]. As such, the State's assertion that Ms. Brackett was seen on video the same night as Ms. Dana saw her, is inaccurate.

- The State claims that just after 12:00 a.m. on April 21, 2022, Melissa Martin's camera captured someone coming down the stairs and then returning to Kim's apartment. [State's Br. 13]. The State then asserts that at 12:17 a.m. the same camera captured the shadows of one or more people moving around in front of Kim's door. [State's Br. 13]. This is the same video footage – admitted as State's 170-C – of a fifteen second clip that shows nothing more than shadows; not separate clips as the State infers.
- However, at approximately this same time, Kim's Blink surveillance video – admitted as State's 171 – showed someone (presumably Kim) grabbing personal effects from the ATV and walking into her house from the ATV. The time stamp indicates that the Blink video was from 4/21/22 at 0119 hours, but Detective Adam Bell from the Maine State Police testified that he became involved in the case on April 23, 2022, and he established that the time stamp was off by one hour and the actual time of the video was 4/21/22 at 12:19 am. [Tr. IV: 96, 103, 106]. The trial prosecutor attempted to show that Kim's Blink video started immediately at the conclusion of the Melissa Martin video, [State's 170B], that showed Kim returning home on her ATV on April 21,

2022, at 8:21 p.m. [Tr. IV: 103, 106]. However, Detective Bell testified that the video of a person at the ATV on Kim's Blink video was "hours later." [Tr. IV: 106]. This further supports Ms. Brackett's assertion that Kim left her house at approximately 10:55 p.m. to meet someone and then return home. [Tr. VI: 33].

- The State claims that the Melissa Martin video from 4/21/22 at 8:07 a.m. "captured Brackett, wearing the same jacket from April 18, walking from the area of Kim's apartment door and proceeding up the ATV trail in the direction of her residence." [State's Br. 13]. This is a misstatement, as the person seen on Melissa Martin's porch on the April 18 video was wearing a black jacket with one stripe on the sleeve cuff and one stripe on the bottom trim. [State's Ex. 170A]. The individual leaving Kim's apartment the morning of the murder was wearing a black jacket with two white stripes on the bottom trim. [State's Ex. 170-D at :03-:04, :07-:08].
  - The testimony cited by the State similarly provides no support for this assertion. Christopher Foxworthy of the Maine State Police testified that "You can see, um, a person leaving the area." [Tr. IV: 171-172]. He in no way identified that person as Ms. Brackett. [*Id.*].

- The State claims that on April 25 Kailie and Donnell Dana were seen loading three to four trash bags into Kailie’s car and that they went to Brewer, arriving at a Brewer hotel around 9:55 p.m. “with no plastic bags.” [State’s Br. 16].
  - The testimony from Maine State Police Detective Lawrence Anderson does not support this statement, nor does it allow a reasonable inference for this statement. Detective Anderson was asked if he viewed video from the Vacationland Hotel and whether Ms. Brackett and Mr. Dana’s son was with them, to which he replied – “I didn’t see their son on the video I collected.” [Tr. IV: 165]. When asked, “Did you observe them carrying any plastic bags in the video?” Detective Anderson replied, “No.”
  - It was undisputed that Ms. Brackett and Mr. Dana’s son was with them in Brewer as he was having surgery the next day [Def. Ex. KB-9] – that Detective Anderson did not see him on the video does not mean he was not with his parents – it simply means the son was not observed on the limited video clip viewed by Detective Anderson. Likewise, that Detective Anderson did not see trash bags on the limited clip he observed does not equate to them “arriving . . . with no plastic bags.”
- The State’s claim that Ms. Brackett testified that while she was in Eastport she was “communicating” with Kim is misleading. [State’s Br. 17]. Like Sam,

Kim's brother, Kailie sent Kim numerous texts during the day of April 21, but none of them received a response. [State's Ex. 187; Tr. I: 102-105; Tr. IV: 244-245].

- The State's assertion that "[i]n the days after Kim's death, Brackett never thought to return Kim's card or money to her family" is also inaccurate. [State's Br. 17]. Ms. Brackett specifically testified that she asked Sam on April 22 what she should do with Kim's stuff and Sam stated that he "didn't know about any of that right now." [Tr. VI: 118]. Based on this conversation Ms. Brackett decided she could figure it out at a later time. [*Id.*]. Ms. Brackett further testified that she tried to give it to Sam again on April 25, and that she informed the police during an interview on April 27 that she had those items of Kim's, but they did not request them and disregarded it as if it meant nothing. [Tr. VI: 119].

Ultimately, the State concludes that the following evidence "combined to support the jury's rational inference that Brackett caused Kim's death." [State's Br. 38].

- The video evidence and observations of Kailie in the days leading up to Kim's death.
  - The video evidence prior to Kim's death **at best** established that Kailie was on Melissa Martin's porch on April 18, 2022.

- “The evidence contradicting [Brackett’s] explanation for her whereabouts on the night Kim was murdered.”
  - There was no evidence that contradicted Kailie’s explanation for where she was on the night Kim was murdered, nor was any cited by the State. There was no video of Kailie coming or going from her home on the night Kim was murdered despite surveillance videos in the area. Further, Kailie’s version of her shopping in the early morning hours while Kim was murdered was supported by documentary evidence.
- “Suspicious attempts to access Kim’s camera system.”
  - The attempt to access Kim’s camera system on April 27, 2022, was in no way tied to Kailie. [Tr. IV: 98-100, 104-105]. However, Detective Bell testified that he knew Sam’s stepfather had made an attempt to access the Blink camera information. [Tr. IV: 109-110].
- “The physical evidence at the scene including the bloody handprint on the wall and through the dresser drawers.”
  - The bloody “handprints” behind Kim’s bed, [State’s Ex. 63], were in no way matched to Kailie and none of Kailie’s DNA was found in the blood smeared behind the bed, [Tr. V: 145-146]. Kailie’s DNA was nowhere at the crime scene. [*Id.* at 141-147, 149-150]. The notebook page containing Kim’s Blink password that the State claims Kailie

accessed was a pristine page with not one drop of blood on it. [State's Ex. 87].

Thus, the State's evidence (excluding Dr. Nirenberg's opinion) – Kailie potentially on Melissa Martin's porch on April 18, 2022, a text from Kailie to Sam on April 21, 2022, asking, "Why didn't her cameras catch anything though," [Tr. I: 127; Tr. VI: 110-111], Hailie Levesque's claim that she overheard Kailie say Kim was going to pay for stealing from Kailie, [Tr. IV: 13, 19], and Kailie using her best friend's ATM card for withdrawals on April, 21, 2022 – is the sum and substance of the State's evidence to convict Kailie of murdering her best friend by stabbing her 484 times. None of that evidence and any reasonable inferences are sufficient to establish Kailie's guilt beyond a reasonable doubt.

As the trial judge instructed the jurors, "In addition, after analyzing the evidence you decide that certain facts have been proven beyond a reasonable doubt, the evidence will also consist of any reasonable inferences that you believe may be drawn from those proven facts. Reasonable inference is another term for circumstantial evidence." [Tr. VII: 114]. Only reasonable inference from proven facts can be used to establish guilt. *State v. Crossman*, 2002 ME 28, ¶ 10, 790 A.2d 603, 606 ("The fact-finder is also permitted to 'draw any reasonable inference that logically flows from the testimony or proved physical facts.'"). (citation omitted). "Inferences based on mere conjecture or probabilities will not support a verdict,"

and inferences drawn from other inferences will not suffice as proof. *Ginn v. Penobscot Co.*, 334 A.2d 874, 880 (Me. 1975). Thus, while the State is allowed to argue reasonable inferences, it may not blatantly misstate facts or argue for speculation as to facts unconnected to the defendant, as it has done here, in attempting to prove guilt.

Thus, this evidence, even when viewed in the light most favorable to the State, was insufficient for the jury to rationally determine Kailie's guilt beyond a reasonable doubt, and this Court must reverse the conviction.

### **CONCLUSION**

For the foregoing reasons, this Court must reverse the conviction.

Date: May 5, 2025

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## CERTIFICATE OF SERVICE

I, Michelle R. King, attorney for Kailie Brackett, hereby certify that on this date I made service of the foregoing Appellant's Reply Brief, by email and U.S. mail, to the following counsel:

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