

IN THE DISTRICT COURT OF SALINE COUNTY, NEBRASKA

STATE OF NEBRASKA,	)	
	)	Case No. CR 18-37
Plaintiff,	)	
	)	
vs.	)	MOTION TO INSPECT
	)	ALLEGED CRIME SCENE
AUBREY C. TRAIL,	)	
	)	
Defendant.	)	

Comes now defendant, Aubrey C. Trail, by and through counsel, Benjamin H. Murray, pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution; Article I-3 of the Nebraska State Constitution; *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963) and its progeny, and moves the Court for an Order granting counsel and their agents access to inspect the alleged crime scene at 621 West 7th Street, Wilber, Nebraska, 68465 and the surrounding area. In support of this motion, it is represented to the Court as follows:

1. The defendant is alleged to have committed the premeditated murder of Sydney Loofe in Saline County, Nebraska on or about November 15 -16, 2017.
2. Through the limited discovery received by the defense at this time, counsel for defendant believe that the investigation by the State is focused on 621 West 7th Street, Apartment B, Wilber, Nebraska 68465 as the principal crime scene in this matter.
3. Counsel for defendant believes that the alleged crime scene was under the control of the State of Nebraska but has since been released to the owner of the property, Alan Koll, who intends to remove all evidence from said premises.
4. A Notice of Right to Reclaim Abandoned Property was issued by Alan Koll and served on defendant outlining Mr. Koll's intentions with respect to the reference property. A copy of the notice is attached hereto, marked "EXHIBIT A", and incorporated herein by this reference.

5. The defense requests that this Court issue an order directing all law enforcement officers, agents, employees, and/or agencies involved to preserve and refrain from releasing the scene to afford the defense team and their agents the opportunity to inspect and observe the scene.

6. Preservation of the scene and the evidence contained within it is vital and material to defendant's defense.

7. In this Court's Discovery Order dated July 16, 2018, the State was ordered to make available to the defense any and all evidence that is material to the defendant's defense.

8. The United States Constitution grants criminal defendants the right to investigate, prepare, and present a defense free from unreasonable governmental interference. See U.S. Const. amends. V, VI, and XIV.

9. The concept of fundamental fairness embedded in the Due Process Clause entitles a defendant to a general right of access to evidence. See Ake v. Oklahoma, 470 U.S. 68, 77 (1985) ("[A] criminal trial is fundamentally unfair if the State proceeds against [a] . . . defendant without making certain that he has access to the raw materials integral to the building of an effective defense."); California v. Trombetta, 467 U.S. 479, 485 (1984) (to safeguard right to present a complete defense embodied in the Due Process Clause, "the Court has developed 'what might loosely be called the area of constitutionally guaranteed access to evidence.' "(citation omitted)).

10. In addition, counsel is obligated under the Sixth Amendment to conduct a thorough and independent pretrial investigation. See Von Moltke v. Gillies, 332 U.S. 708, 721 (1948) ("prior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings, and laws involved . . ."); Powell v. Alabama, 287 U.S. 45, 47 (1932) (noting that "thorough-going investigation and preparation" by defense counsel is "vitally important").

11. Counsel is willing to abide by all reasonable conditions that may be placed on the inspection of the scene for the purposes of preserving the integrity of the physical evidence.

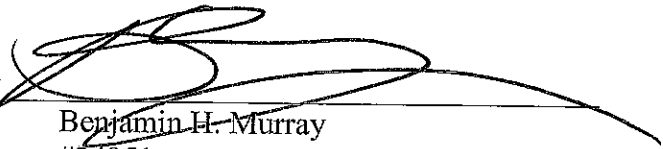
12. On the basis of the foregoing authorities and defendant's weighty interest in

exploring and gathering relevant and material evidence in his defense, the Court should order law enforcement officers, agents, agencies, and/or employees to preserve and hold the scene to allow counsel an opportunity to access and inspect it, subject to such reasonable limitations and restrictions as the Court may impose.

WHEREFORE, defendant moves this Court for an Order granting counsel and their agents access to inspect the alleged crime scene at 621 West 7th Street, Wilber, Nebraska, 68465.

Respectfully submitted this 25 day of July, 2018.

AUBREY C. TRAIL, Defendant

By 

Benjamin H. Murray
#24951

One of His Attorneys
GERMER, MURRAY & JOHNSN
147 North 4th Street
P.O. Box 87
Hebron, Nebraska 68370
(402) 768-7400

CERTIFICATE OF SERVICE

This is to certify that I served the above and foregoing pleading upon all parties herein via electronic mail to Mr. Michael Guinan, Special Deputy Saline County Attorney, at mike.guinan@nebraska.gov, this 25 day of July, 2018.


Benjamin H. Murray
#24951

One of His Attorneys
GERMER, MURRAY & JOHNSN
147 North 4th Street
P.O. Box 87
Hebron, Nebraska 68370
(402) 768-7400

NOTICE OF RIGHT TO RECLAIM ABANDONED PROPERTY

To: Aubrey Trail
c/o Saline County Law Enforcement Center
P.O. Box 911
Wilber, NE 68465

When you vacated the premises at 621B West 7th Street, Wilber, NE 68465 the following personal property remained: See Exhibit A - Pages 1 - 4 attached hereto. You may claim this property at 621B West 7th Street, Wilber, NE 68465.

Unless you pay the reasonable costs of storage for all the above-described property and take possession of the property, which you claim not later than July 31, 2018 this property may be disposed of pursuant to the Disposition of Personal Property Landlord and Tenant Act.

Because this property is believed to be worth less than two thousand dollars, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated in this notice.

As of this date the storage costs are \$2875.00

Dated: July 17, 2018



Alan Koll, Landlord
402-821-7476
621A West 7th Street
Wilber, NE 68465

Master Bed room

King size bed frame
Mattress, box spring foundation-No value
Dresser
Women's clothing
Stand up Jewelry box
Corner lamp
Make-up vanity and stool
Night stand
TV
DVD player and remote
Men's clothes and shoes
Pictures
Luggage
Glass jug with change
Wall mirror
Wall hangings and picture frames(most of which were removed from walls and pictures removed)
Necklaces, bracelets
Watch
Vape pens
Hand bags
Nail polish, makeup, makeup brushes-No value
-Disposed of
Blankets, bedding, pillows
Cannon printer
Elephant foot stool
Black foot stool with movies inside

Stuffed animals

Pens, pencils

Packing tape

Candles, candle holders

Figurines

Small fan

Old tennis racket

Shot glass

Ear rings

Phone cords, power cords, extension cords

Batteries

Living room

Couch and chair- upholstery has been removed-
No value

TV stand and TV

Movies

Elephants

Tall curio cabinet

2 table lamps

Pole lamp

Desk and black office chair- bills and check books included

Coffee table and 2 end tables

Antique wall phone

Small vase and flowers

Wall hangings and pictures

Empty camera bag

DVD player and remote

Assorted figurines

Elephant figurines –statues

3-candle stick holders

2-vases

3-artifact mask

Scented candles

3- Picture frames

Clock

Snow globe

Wallets

Tobacco tin

Magazines, books

Phone and extension cords

Pens, pencils, paper

Watches

Reading glasses

Pillows

Small blankets

Bathroom

Small trash can

Laundry basket

Shampoo Conditioner-No value –Disposed of

Razors-No value –Disposed of

Cold packs-No value –Disposed of

Towels

Wash cloths

Bathroom scale

Wall mirror

Bed room

Exercise bike-No value

Women's cloths

Several bags of women's shoes

Luggage

Packing supplies and boxes

Kid's sleeping bag

Aprox. 14 pictures

Stuffed animals

Old watches

Old Christmas tree toppers

Old dishes

Glass figurines

Old electrical plugs fittings supplies

Car tire chain parts

Car oil filters

Air filters

Tubeless tire plugs

Auto parts

Salt pepper shakers and creamers

Cast iron- metal and plastic toys (cars trucks tractors games)

Metal statues

Old electric train parts and pieces

Lion rug

Old advertisement signs

Clock

Civil war memorabilia

Eye glass repair items

Watch repair items

Jewelry repair items

Beanie babies Aprox. 56

2 war rotation books

Old license plates

Old metal tin container

Dishes

Silverware

Pots and pans

Small clock

Trash can

Vase with decorative flowers

Pictures

Picture frames

Glass picture-broken

Glass bowl

Small metal box

Kitchen

Film strips (hanging on wall)

Wooden cabinet with 30 old cameras included

Kitchen table and chairs

Washer and dryer with parts removed by FBI-
No value

Small lamp on the refrigerator

Cloths on the kitchen floor

Microwave

Toaster

Coffee pot-No value –Disposed of

Food left in cupboards and refrigerator-No
value –Disposed of

Pantry

Antique lunch boxes

Glass bowls

2 old meat grinders

Comic books

Wooden bushel basket

Broom and dust pan

Red metal coke cola stand

Shackles

Plastic figurines

Old lamp with broken shade

Old horticultural book

Old calendar 1917

Trading cards

Comic books

Glass photo slides

Paddle locks

Coin display holders

1853 Jewish bible

Cast toy soldiers military figures

Old wind up metal toys

Collectable dishes and glasses

Ken doll with carry case

1 box old silver ware stainless ware

Entryway closet

Large chest with calendars magazines papers and pictures included

Vacuum cleaner

Desk lamp

Budweiser Steins aprox. 48

Collectable glasses- figurines- statues- vases

Trading cards

Old metal toy trucks

News papers

Magazines

Books

Clock

Ash trays

Fruit canister set

Easel

Hats

Kids shoes

Old jars bottles

Old tools

Tire inner tubes

Electric appliance power cords

New spade

Outside

Man hole cover

Small charcoal grill

2 lawn chairs

Cast iron kettle

Certificate of Service

I hereby certify that on Wednesday, July 25, 2018 I provided a true and correct copy of the Motion Filed to the following:

State of Nebraska represented by Sandra Allen (Bar Number: 22318) service method:
Electronic Service to sandra.allen@nebraska.gov

State of Nebraska represented by Eickman,Tad,D (Bar Number: 15655) service method:
Electronic Service to eickmanlaw@hotmail.com

State of Nebraska represented by Michael Guinan (Bar Number: 21950) service method:
Electronic Service to michael.guinan@nebraska.gov

Trail,Aubrey,C represented by Murray,Joseph H, (Bar Number: 12994) service method:
Electronic Service to joemurray@gmjlaw.com

Signature: /s/ Benjamin H. Murray (Bar Number: 24951)