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6  
7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
8 IN AND FOR THE COUNTY OF PIMA

9 STATE OF ARIZONA,

10 Plaintiff,

v.

11 JACK DARYL UPCHURCH (003)

12  
13 Defendant.

Case No. CR20250148-003

14 **DEFENDANT'S MOTION TO**  
15 **EXCLUDE OPINION TESTIMONY**  
16 **REGARDING SHOE IMPRESSIONS**  
(Hearing Requested)

17 Defendant Jack Daryl Upchurch ("Upchurch"), by and through his undersigned  
18 attorney, hereby respectfully requests that the Court enter an order that excludes lay and  
19 expert opinion testimony concerning shoes and shoe impressions, pursuant to Rules 701  
20 and 702 of the Arizona Rules of Evidence. The motion is also based on Rule 15.7 of  
21 Arizona Rules of Criminal Procedure, as set forth in Defendant's pending motion for  
22 disclosure sanctions, filed herein on October 21, 2025.  
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1 **I. SUMMARY OF FACTS**

2 In this murder case, the State intends to claim that it has developed shoeprint  
3 evidence that buttresses the testimony of Upchurch's codefendants, who will give self-  
4 serving testimony that shifts blame to him. However, this claim depends on police  
5 opinion that is inadmissible guesswork.  
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7 Allegedly, the police located shoeprints in at least three locations: where the  
8 victim was found, near the victim's home, and at a nearby construction site. At least some  
9 of these prints supposedly "match" and, further, they are supposed to have been made by  
10 "Fila" brand shoes that Upchurch allegedly wore.  
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12 However, the State cannot prove a match via expert opinion testimony, as it will  
13 not call any shoe impression experts. Nor can it do so with lay opinion testimony, as such  
14 testimony is prohibited.  
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16 The State also cannot rely on lay opinion for footprint comparisons. Specialized  
17 knowledge is required to make reliable comparisons with the shoes, which the police  
18 claim to have seized on January 3, 2025, several days after Upchurch's arrest. The shoes  
19 were burned and melted, including the soles. Nonexperts cannot reliably opine about their  
20 tread or their brand. Nor can lay witnesses testify that Fila shoes were involved in  
21 general, as that would amount to unnoticed and unqualified expert testimony based on  
22 inadmissible evidence.  
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25 For these reasons and other discussed below, the Court should grant this motion in  
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1 its entirety.

### 2 **III. ARGUMENT**

#### 3 **A. “Match” Testimony Must Be Excluded**

4 The Court should exclude expert and lay opinion testimony of any “match”  
5 between or among shoeprints, the seized shoes, or Fila-brand shoes in general. *See State*  
6 *v. Coleman*, 122 Ariz. 99, 593 P.2d 653 (1979) (error to admit nonexpert testimony that  
7 shoeprints matched defendant’s shoes).  
8

9 “Match” testimony requires specialized knowledge not within the competence of  
10 ordinary lay witnesses. *Coleman*, 122 Ariz. at 101. However, the State has not noticed  
11 any shoe impression expert. Therefore, expert testimony on the subject must be excluded.  
12 *See* Defendant’s Motion for Disclosure Sanctions, filed herein on Oct. 21, 2025.  
13 Lay opinion testimony also must be excluded, as lay opinion testimony is  
14 admissible only if it is “not based on scientific, technical or other specialized knowledge  
15 within the scope of Rule 702[,]” i.e., expert opinion. *See* Ariz.R.Evid., 701. 1 But  
16 “match” testimony is specialized knowledge within the scope of Rule 702. *Coleman*, 122  
17 Ariz. at 101. So lay opinion testimony is inadmissible, too.  
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19 For these reasons, any opinion that there is a match between or among any  
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23 1 If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:  
24 (a) rationally based on the witness's perception;  
25 (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and  
26 (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

27 Ariz.R.Evid., R. 701 (2025).  
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1 shoeprints (including between shoeprints), the seized shoes, and Fila-brand shoes in  
2 general must be excluded.

3 **B. Similarity Testimony Must Be Excluded**

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5 The Court also must exclude any lay or other opinion testimony that points out  
6 alleged similarities between or among shoeprints, shoes and/or Fila-brand shoes in  
7 general. *See* Ariz.R.Evid., R.701 (providing that lay opinion must be “rationally based on  
8 the witness’s perception; helpful to the jury, and “not based on scientific, technical or  
9 other specialized knowledge”).  
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11 Such testimony would not be rationally based on police perceptions or be helpful  
12 to the jury and would amount to unqualified and unnoticed expert opinion. Ordinary  
13 witnesses cannot reliably draw useful comparisons from burnt and melted shoe soles  
14 seized many days after a defendant’s arrest. *Cf. State v. Amaya-Ruiz*, 166 Ariz. 152, 800  
15 P.2d 1260 (1990) (error, if any, in admitting lay opinion testimony is harmless when it  
16 compares admitted shoeprint photos with shoes “worn by defendant at the time of his  
17 arrest”). Expert testimony is needed, but none has been noticed.  
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20 Furthermore, the police conclusions arose from prejudgment not observations  
21 about the shoes. Days before seizing the shoes, the police already had decided the  
22 shoeprints came from a Fila-brand shoes based on an undisclosed internet search (the  
23 content of which would be inadmissible hearsay). From this undisclosed guesswork, the  
24 police concluded that Upchurch was wearing Fila shoes in surveillance videos and, in  
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1 turn, that he must be the source of the shoe impressions. Any lay opinion about  
2 comparisons would be based on this series of shaky assumptions not observations about  
3 the melted shoes.

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5 For similar reasons, the Court should exclude lay opinion comparing shoe  
6 impressions to Fila brand shoes in general. Such opinion lacks foundation, as the State  
7 has not disclosed any basis for the comparison. In effect, the police will testify as  
8 unqualified and unnoticed experts relying on inadmissible data, not as lay witnesses  
9 highlighting aspects of admitted evidence. *Cf. Amaya-Ruiz*, 166 Ariz. at 168 (harmless  
10 error to admit lay opinion testimony, as “jury was permitted to reach its own conclusion  
11 as to the similarity or dissimilarity between the photograph and defendant's shoe”). This  
12 is not permitted, so any opinion testimony must be excluded.  
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15 For these reasons, the Court should exclude opinion testimony that points out  
16 alleged similarities between or among shoeprints, shoes and/or Fila-brand shoes in  
17 general.  
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### 19 **III. CONCLUSION**

20 For these reasons, Upchurch respectfully requests that the Court grant this motion  
21 in its entirety.  
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23 RESPECTFULLY SUBMITTED this 27th day of October, 2025.

24 /s/ Michael A Harwin  
25 Michael A. Harwin  
26 Attorney for Jack Darryl Upchurch  
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1 Copy of the foregoing emailed this date to:

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3 Pima County Attorney's Office

