

[CAPTION]

DEFENDANT'S MOTION FOR LEAVE TO INSPECT PREMISES

The Defendant, by counsel, pursuant to T.R. 34(A)(2) and Criminal Rule 21, respectfully requests this Court for an Order granting leave to [select: inspect, measure, survey, photograph, test or sample the premises or any designated object or operation thereon] located at [insert address] for the following good and sufficient reasons:

1. _____

2. _____

3. _____

4. There is no paramount State's interest in denying the Defendant the same access to this residence afforded to the State of Indiana.

WHEREFORE, the Defendant, by counsel, respectfully moves this Court for an Order permitting the Defendant to inspect the premises at [insert location] on a day and time specified by the Court, and for all other relief just and proper in the premises.

(Signature)

REFERENCES

T.R. 34, Indiana Rules of Procedure (production of documents and things and entry upon land for inspection and other purposes; rule requires 15-day notice sent to each party prior service on the non-party)

Criminal Rule 21 (rules of trial procedure apply to all criminal proceedings so far as they are not in conflict with any specific rule adopted for the conduct of criminal proceedings).

CASE LAW

Mahrtdt v. State, 629 N.E.2d 244 (Ind.Ct.App. 1994) (Defendant had right to inspect breathalyzer machine, and State's refusal to allow Defendant to do so before re-certifying machine, despite Court order, required suppression of BAC results).

Schwartz v. State, 177 Ind.App. 258, 379 N.E.2d 480 (1978) (in dealing with controlled or dangerous substances, trial judge may set guidelines where necessary and appropriate under attending facts and circumstances of each case allow defendant an independent analysis where a sufficient quantity of substance exists, and prescribe where and when examination will be allowed, but where an insufficient quantity exists, defense will be allowed to use results of state's testing and probe veracity of those reports).

Perdue v. State, 398 N.E.2d 1290 (Ind.Ct.App. 1979) (Defendant, who filed a motion to permit inspection of scene of crime in July of 1975 but who did not actually make the inspection until January of 1978, was not denied opportunity to inspect in a timely manner, where the delay was the Defendant's fault in that the delay between July of 1975, and February of 1977, was due to the Defendant's failure to file a motion in compliance with T.R. 34(C) dealing with inspection requests directed to nonparties).