

**[CAPTION]**

**MOTION TO EXCLUDE AUTOPSY PHOTOGRAPHS AND REQUEST FOR HEARING**

The Defendant, by counsel, respectfully requests this Court to issue an Order barring the prosecution from presenting autopsy photographs to the jury in this case. In support of the Motion, the Defendant states the following:

1. The Defendant is willing to stipulate to the identity of the victims and the fact and cause of death.

2. Consequently, there is no need to present autopsy photos to the jury, as the prejudicial impact is greater than any probative value that remains after the proffered stipulation.

3. Autopsy photos are generally inadmissible if they show the body in an altered condition. When a body is altered for a photograph, the jurors may impute the work of the examiner to the accused and render the defendant responsible for the cuts, incisions, and indignity of the autopsy. Swingley v. State, 739 N.E.2d 132 (Ind. 2000); Allen v. State, 686 N.E.2d 760 (Ind. 1997).

4. The use of autopsy photos has been disapproved in Loy v. State, 436 N.E.2d 1125 (Ind. 1982); Warrenburg v. State, 260 Ind. 572, 298 N.E.2d 434 (1973); Kiefer v. State, 239 Ind. 103, 153 N.E.2d 899 (1958).

5. For autopsy photographs to be admissible, the State must establish that such photographs are relevant to an issue in the case.

6. A showing of relevance alone does not render autopsy photographs admissible. This Court must, pursuant to Ind.R. Evid. 403, weigh the probative value of the photographs against their potential prejudicial impact. Dresser v. State, 454 N.E.2d 406 (Ind. 1983).

7. An evidentiary hearing is necessary in the interests of judicial economy and so a record can be made of the State's attempt to establish relevancy and the defense's arguments in support of this Motion.

8. Failure to order the State to notify defense counsel in advance of trial as to which autopsy photographs it intends to offer at trial and failure to conduct an evidentiary hearing will result in the denial of due process, the right to effective assistance of counsel, the right to present evidence, and the right to adequate appellate review, as guaranteed by the United States Constitution, Amendments Six, Eight, and Fourteen, and the Indiana Constitution, Article I, Sections 12, 13, 16, 18, 19, and Article VII, Section 6.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to issue an Order that bars the state from presenting autopsy photographs to the jury, or in the alternative, require the State to notify this Court and the Defendant prior to motions hearings in this cause as to which autopsy photographs it intends to offer at trial, to order an evidentiary hearing on this matter well prior to trial so the Court can make a definitive ruling well in advance of trial as to which, if any, of the autopsy photographs will be allowed into evidence.

(Signature)