

IN THE CIRCUIT COURT, FOURTH  
JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA.

CASENO.: 16-2012-CF-011572

DIVISION: CR-D

STATE OF FLORIDA

VS.

MICHAEL DAVID DUNN

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**DEFENDANT'S MOTION IN LIMINE REGARDING**  
**INFLAMMATORY PHOTOGRAPHS**

The Defendant MICHAEL DUNN, by and through undersigned counsel, moves this Honorable Court to enter its Order in *Limine* restricting the admission at the trial of this cause of certain inflammatory photographs; and would show:

The State, through the Medical Examiner, has taken several photographs to journal the instant case, and plans on introduction of same. There is no issue of the decedent that is in dispute, and said photographs, other than the specific injuries, would be irrelevant, improper and prejudicial.

Controlling herein is the oft-cited Florida Supreme Court case of *Dyken v. State*, 89 So.2d 866 (Fla. 1956). In that homicide case, the Supreme Court affirmed the rule that for a gruesome photograph of the decedent to be admissible, it must be "independently relevant." Where, as in *Dyken*, "[t]he location of the wound was freely conceded and abundantly proved by other evidence[, t]he photograph did not ... have any independent probative value" and should have been excluded. *Id.* at 866-7. "[T]he introduction of [such a] photograph in evidence could have had no purpose or effect other than to inflame the minds of the jurors." *Id.* at 867. See also *Duncan v. State*, 619 So.2d 279, 282 (Fla. 1993); *Rosa v. State*, 412 So.2d 891, 892 (Fla. 3d

DCA 1982) (reversing murder conviction "upon our holding that the photograph of the deceased's blood-spattered body ... was irrelevant"). In *Young v. State*, 234 So.2d 341 (Fla. 1970), which also involved a homicide prosecution, the state introduced 22 photos "show[ing] all or portions of the victim's partially decomposed torso." *Id.* at 347. The Court acknowledged that several of these photos were independently relevant. Because identification of the decedent was in dispute, a photo clearly showing a tattoo on his arm was properly admitted. *Id.* at 348. Similarly, because there was a dispute whether death was properly categorized as homicide or suicide, photos "reveal[ing] the manner in which several strands of wire had been wrapped around the victim's neck and body," *id.*, were relevant and admissible. But as to the others, the:

very number of photographs of the victim in evidence here ... cannot but have had an inflammatory influence on the normal fact-finding process of the jury. The number of inflammatory photographs and resulting effect thereof was totally unnecessary to a full and complete presentation of the state's case. ... [We conclude] that reversible error was committed by introduction of an unnecessarily large number of inflammatory photographs.

Virtually all American jurisdictions recognize that "in the presence of an offer to stipulate the facts shown in the photograph, the state's burden of justification is often difficult to sustain." *People v. Chavez*, 329 P.2d 907 (Cal. 1957). See generally *Poe v. Commonwealth*, 301 S.W.2d 900 (Ky. 1957); *State v. Waitus*, 77 S.E.2d 256, 263 (S.C. 1953); *State v. Maka!*, 455 P.2d 450 (Ariz. 1969); *State v. Faulkner*, 209 N.W.2d 193 (Mich. 1973); *State v. Bucanis*, 138 A.2d 739 (N.J. 1958), *cert. denied* 357 U.S. 910 (1958); *Oxendine v. State*, 335 P.2d 940 (Okla. Cr. App. 1958). In the words of the Second District,

Photographs that are gruesome, offensive and/or inflammatory must be relevant to an issue required to be proved in the case. [citation omitted.] While the photographs [in this case] may have been tangentially relevant to appellees' case, their relevance is overwhelmingly outweighed by their gruesome and inflammatory nature. [citation omitted.] The photographs do not in themselves independently establish any material part of appellees' case, nor were they necessary to corroborate some disputed factual issue.

*Gomaco Corporation v. Faith*, 550 So.2d 482, 483 (Fla. 2d DCA 1989).

Wherefore, the Defendant, MICHAEL DUNN, respectfully prays that this Honorable Court enter its Order excluding the above-described photographic evidence at the trial of this cause; or, in the alternative, conducting an *in camera* examination of the specific photographic evidence which the prosecution seeks to offer at the trial of this cause, and placing narrow restrictions on the introduction and use of such evidence.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Office of the State Attorney, Duval County, 220 East Bay St., Jacksonville, Florida 32202 by Efile, Email, Hand Delivery or Facsimile this 2nd September, 2014.

Office of Jeffrey E. Lewis

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