

District Court: Otero County, Colorado Court Address: 13 W. 3 <sup>rd</sup> St. La Junta,, CO 81050	FILED IN COMBINED COURT OTERO COUNTY, COLO.  SEP 30 2015  ↑ COURT USE ONLY ↑ <hr/> Case Number: 2014 CR 217  Div.: A
<hr/> PEOPLE OF THE STATE OF COLORADO  vs.  Defendant: JAMES ADAM PATRICK ASHBY	
<hr/> JAMES R BULLOCK, DISTRICT ATTORNEY Atty. Reg. 14020 jbullock@da16co.gov Sixteenth Judicial District 323 Santa Fe Avenue, Suite 201 La Junta, Colorado 81050 Phone 719-384-8786 Fax 719-384-7330	
RESPONSE TO DEFENDANT'S MOTION (D-18)	

**REDACTED**

COMES NOW JAMES R. BULLOCK, DISTRICT ATTORNEY, and hereby submits the following Response to defendant's D-18 Motion. In response to the Defendant's motion, the People reply as follows:

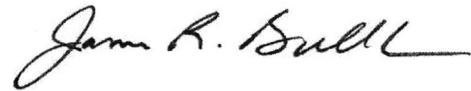
It is within the trial court's discretion to decide whether photographs are unnecessarily gruesome or inflammatory, and the court's decision will not be reversed absent a showing of an abuse of discretion. *People v. Dunlap*, 975 P.2d 723, 746 (Colo. 1999).

"Photographs of a homicide victim are admissible at trial when they depict the appearance of the victim, the location and nature of the wounds, or other facts that would be competent for a witness to describe in words." *People v. Raglin*, 21 P.3d 419, 427 (Colo.App. 2000), *overruled on other grounds by Fain v. People*, 2014 CO 69, 329 P.3d 270; *Dunlap*, 975 P.2d at 726. ("Photographs are admissible to depict graphically anything a witness may describe in words." (quoting *People v. Roark*, 643 P.2d 756, 762 (Colo. 1982))).

However, under CRE 403, otherwise relevant evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice. Evidence is unfairly prejudicial under CRE 403 if it has an "undue tendency to suggest a decision on an improper basis, commonly but not necessarily an emotional one, such as sympathy, hatred, contempt, retribution, or horror." *People v. Herrera*, 2012 COA 13, ¶ 41, 272 P.3d 1158, 1166 (quoting *Masters v. People*, 58 P.3d 979, 1001 (Colo. 2002)). While the rule "is an important tool to exclude matters of scant or cumulative probative force," CRE 403 favors the admission of evidence. *Yusem v. People*, 210 P.3d 458, 467 (Colo. 2009).

By virtue of the law favoring admission, it is the position of the prosecution that such exhibits be admissible upon the laying of proper foundation.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink that reads "James R. Bullock". The signature is written in a cursive style with a long horizontal stroke at the end.

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James R. Bullock, #14020  
District Attorney