

IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

FILED  
JAN 2 1996  
Lincoln Sher. Ct. Clerk, Lincoln Co., Okla.  
By: [Signature] Deputy

|                    |   |                    |
|--------------------|---|--------------------|
| STATE OF OKLAHOMA, | ) |                    |
|                    | ) |                    |
| Plaintiff,         | ) |                    |
|                    | ) |                    |
| -vs-               | ) | Case No. CF-95-104 |
|                    | ) |                    |
| JOSHUA D. STUMP,   | ) |                    |
|                    | ) |                    |
| Defendant.         | ) |                    |

**MOTION TO PROHIBIT JURY DISPERSAL AND TO PROHIBIT JURY'S EXPOSURE TO VICTIM'S FAMILY OR FRIENDS**

COMES NOW the Defendant, by and through his attorney, and moves this Court pursuant to the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, and the laws and constitution of the State of Oklahoma to require that the jurors remain together throughout the proceedings, not communicate with anyone except the Court or the bailiffs, and not be taken out of the courtroom in a manner whereby they have to pass by, through or between the victim's family or friends. In support of said motion, the Defendant would show the Court:

1. This is a capital murder case and it is very important that no juror communicate with anyone other than the Court or the bailiffs.
2. The courthouse is set up in such a manner whereas the jurors, when being taken to lunch or when taken out of the courtroom at night, or when coming into the courtroom in the morning, by necessity, have to pass down the hall where the victim's parents, family, friends or witnesses ordinarily sit while waiting for court to proceed.
3. To wait until the hall is clear before taking the jury from the jury room or to the jury box would in no way prejudice the State's case.

MICROFILM ROLL # \_\_\_\_\_ ORIGINAL PAGE# \_\_\_\_\_

WHEREFORE, premises considered, Defendant prays that this Court enter an order requiring that the jury not be dispersed at any time, not communicate with anyone except the Court or the bailiffs; that all communications by the jury shall be reported directly to the attorneys for the Defendant; and that the jury not be taken out of the courtroom at a time when they can be exposed to the victim's family, friends or other witnesses.

Respectfully submitted,

James T. Rowan  
James T. Rowan, OBA #7787  
Oklahoma Indigent Defense System  
Capital Trial Division  
P.O. Box 926  
Norman, OK 73070-0926  
(405) 329-4272  
ATTORNEY FOR JOSHUA D. STUMP

**CERTIFICATE OF SERVICE**

This is to certify that on this 11th day of January, 1996, a true and correct copy of the above and foregoing instrument was mailed, postage pre-paid, to the office of Miles C. Zimmerman, Lincoln County District Attorney, P.O. Box 126, Chandler, Oklahoma 74834, and to the office of Barney K. Barnett, Lincoln County Assistant District Attorney, P.O. Box 126, Chandler, Oklahoma 74834.

James T. Rowan  
James T. Rowan

MICROFILM ROLL# 71 PAGE# 134

IN THE DISTRICT COURT OF LINCOLN COUNTY  
STATE OF OKLAHOMA

FILED  
JAN-12 1996 8:55 AM  
Lincoln Star, Ct. Clerk Lincoln Co. Okla.  
By [Signature] Deputy

STATE OF OKLAHOMA, )  
)  
Plaintiff, )  
)  
-vs- ) Case No. CF-95-104  
)  
JOSHUA D. STUMP, )  
)  
Defendant. )

DEFENDANT'S OBJECTION TO VERDICT FORM  
RE: "CONTINUING THREAT"

The Defendant objects to the standard second stage verdict form with respect to the "continuing threat to society" aggravating circumstance alleged by the State. In support of this motion, the Defendant shows:

1. The standard verdict form listing the "continuing threat" aggravating circumstance simply recites the bare statutory language of this aggravator. (Compare 22 O.S. § 701.12 and OUJI-CR 443).
2. None of the terms used, particularly "probability", "criminal acts of violence", "continuing threat", and "society" are defined for the sentencing jury.
3. Because the verdict form lacks definitions for these terms, and thus definition of what is meant by this aggravating circumstance, the verdict form on this aggravator is vague and non-specific. This general, open-ended language does not properly channel and limit the jury's discretion on this aggravator to readily identifiable, objective factors.
4. Use of this improper verdict form would violate the Defendant's rights under the Eighth and Fourteenth Amendments to the United States Constitution and under Article II, §§ 7, 9 and 20 of the Oklahoma Constitution.

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5. The Supreme Court of the United States has made it abundantly clear that when a sentencing body is told to weigh a vague and imprecise aggravating factor, it invites arbitrary and capricious application of the death penalty in violation of the Eighth and Fourteenth Amendments. Godfrey v. Georgia, 446 U.S. 420, 100 S.Ct. 1759, 64 L.Ed.2d 398 (1980); Maynard v. Cartwright, 486 U.S. 356, 108 S.Ct. 1860, 100 L.Ed.2d 372 (1980).

6. Oklahoma is a "weighing" jurisdiction in its sentencing scheme in death penalty cases. That is, after the jury has found a defendant guilty of Murder in the First Degree and has found the existence of at least one statutory aggravating factor, it must weigh the aggravating factor or factors against the mitigating evidence. In a "weighing" state, it is even more important "... that aggravating factors be defined with some degree of precision." Stringer, *supra*, 503 U.S. at 230, 112 S.Ct. at 1136.

7. Oklahoma's system of imposing capital punishment, just as the system analyzed in Stringer, has always been "... one in which aggravating factors are critical in the jury's determination whether to impose the death penalty." *Id.* 503 U.S. at 234, 112 S.Ct. at 1139.

As the Supreme Court stated:

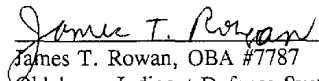
... our precedents... have not permitted a State in which aggravating factors are decisive to use factors of vague or imprecise content. A vague aggravating factor employed for the purpose of determining whether a defendant is eligible for the death penalty fails to channel the sentencer's discretion. A vague aggravating factor used in the weighing process is in a sense worse, for it creates the risk that the jury will treat the defendant as more deserving of the death penalty than he might otherwise be by relying upon the existence of an illusory circumstance. Because the use of a vague aggravating factor in the weighing process creates the possibility not only of randomness, but also of bias in favor of the death penalty... *Id.* 503 U.S. at 235, 112 S.Ct. at 1139.

8. "When the weighing process itself is skewed" by the weighing of a vague, indefinite, and thus invalid aggravating factor, it places the proverbial "thumb" on "death's side

of the scale" denying a defendant the required "dual constitutional criteria of precise and individualized sentencing." *Id.* 503 U.S. at 232, 112 S.Ct. at 1137.

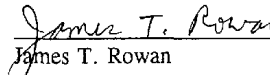
**WHEREFORE**, the Defendant asks that this objection be sustained and that this Court precisely define the terms used to support the jury's finding of the "continuing threat" aggravating circumstance.

Respectfully submitted,

  
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Oklahoma Indigent Defense System  
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Norman, OK 73070-0926  
(405) 329-4272  
**ATTORNEY FOR JOSHUA D. STUMP**

**CERTIFICATE OF SERVICE**

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James T. Rowan

IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

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|--------------------|---|--------------------|
| STATE OF OKLAHOMA, | ) |                    |
|                    | ) |                    |
| Plaintiff,         | ) |                    |
|                    | ) |                    |
| -vs-               | ) | Case No. CF-95-104 |
|                    | ) |                    |
| JOSHUA D. STUMP,   | ) |                    |
|                    | ) |                    |
| Defendant.         | ) |                    |

FILED  
 JAN 22 1996 8:55 AM  
 Linda Sizer, Ct. Clerk Lincoln Co. Okla.  
 Deputy

**MOTION TO STRIKE UNADJUDICATED OFFENSES ALLEGED  
 IN SUPPORT OF "CONTINUING THREAT" AGGRAVATING CIRCUMSTANCE**

COMES NOW the Accused, by and through his attorney of record, and moves this Honorable Court to strike all unadjudicated offenses alleged in support of the "continuing threat" aggravating circumstance. In support of this motion, the Accused shows the following:

1. The State has filed a Bill of Particulars in this case. The Bill alleges the existence of the statutory aggravator that the Accused will probably commit criminal acts of violence which would constitute a continuing threat to society.
2. In support of the "continuing threat" aggravating circumstance, the State alleges the existence of unadjudicated offenses.
3. The Accused contends that the admission of these unadjudicated offenses are, in the first instance, unfairly prejudicial because, at this point, the surrounding facts have not been proven and only stand as an accusation; in the second instance, accusations such as the ones offered in this case, standing alone, are not reliable in a qualitative sense as required by the Eighth Amendment. Most importantly, the very same evidence would be inadmissible in a non-capital trial.

**ARGUMENT AND AUTHORITIES:**

In the case of Paxton v. State, 867 P.2d 1309 (Okla.Cr.1994), the Court of Criminal Appeals ruled that unadjudicated offenses may be introduced during the second stage of a capital trial to support the aggravating circumstance of "continuing threat". The Court then suggested that admission of this type of evidence was acceptable even when considering that Oklahoma's

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Habitual Offender statute (21 O.S. 1981, § 51) specifically disallows the use of unadjudicated offense to enhance the level of punishment in non-capital cases because unadjudicated offenses are inherently unreliable. Such an analysis means that persons convicted of crimes where the death penalty cannot be sought receive more protection than those persons who face the death penalty.

It is a plain violation of equal protection to allow the State to enhance punishment and seek the death penalty on the basis of unadjudicated crimes, but to prohibit punishment enhancement in non-capital cases unless there is proof of a prior conviction. Because the introduction of evidence related to unadjudicated offenses undercuts the reliability of the punishment decision, evidence of unadjudicated crimes should be excluded from the State's case-in-chief in the second stage of these proceedings, in the event a conviction against the Accused is returned.

The Eighth Amendment of the United States Constitution mandates that a higher level of scrutiny be utilized when assessing the death penalty punishment. *See also* Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), *and* Woodson v. North Carolina, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976). As a result, allowing the unrestricted use of unadjudicated offenses plainly violates mandates of the United States Constitution, the Oklahoma Constitution, and corollary interpretive guidelines provided by long-standing case authority.

Judge Chapel, in his dissenting opinion in Paxton, states that the unrestricted use of unadjudicated offenses is not constitutionally permissible. Judge Chapel advocates that Oklahoma should join the eight states which currently prohibit the use of unadjudicated offenses in the punishment phase of trial, or alternatively, join the ten states that place restrictions on the

use of unadjudicated offenses. *See, e.g., State v. McCormick*, 397 NE 3d 276, 280-81 (Ind.1979); *Cook v. State*, 369 S.2d 1251, 1257 (Ala.1978); *Perry v. State*, 395 S.2d 170,174-75 (Fla.1980); *State v. Bobo*, 727 SW 2d 1079, 1085-86 (Tenn.1984). Judge Chapel reasoned "It is unfathomable to me that only prior convictions can be used in non-capital sentencing procedures, but that evidence of unadjudicated offenses, which may be nothing more than unsubstantiated hearsay, suspicion, and accusation, are admissible when a person's life is in the balance at a capital sentencing."

In the United States Supreme Court case of *Williams v. Lynaugh*, 484 U.S. 937, 108 S.Ct. 313 (1988), Justices Marshall and Brennan commented on Texas' similar inconsistent sentencing scheme:

"As Texas' prohibition against the use of unadjudicated offenses in non-capital cases suggests, the use of such evidence at sentencing is at tension with the fundamental principle that a person may not be punished for a crime that the state has not shown he committed. In the context of capital sentencing, this tension becomes irreconcilable. The Court has repeatedly stressed that because the death penalty is qualitatively different from any other punishment, there is a corresponding difference in the need for reliability in determination that death is the appropriate punishment in a specific case. In my view, imposition of the death penalty in reliance on mere allegations of criminal behavior fails to comport with the constitutionally requirement of reliability."

While the cited opinions above are dissents, they are drawn from and supported by principles absolutely central to death penalty jurisprudence. *See also Lockett v. Ohio*, 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978); *Eddings v. Oklahoma*, 455 U.S. 104, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982); *Gardner v. Florida*, 430 U.S. 349, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977).

Unadjudicated offenses have only a potential basis in truth and fact, and it is improper that a jury must rely upon a potential prior conviction when considering a sentence of death.

A potential prior conviction for a crime of violence can only create the parallel possibility that the defendant's future dangerousness is also only potential, thereby relegating the burden of proof to a probable cause or preponderance of the evidence standard.

Such an open-ended application and interpretation of the "continuing threat" aggravating circumstance does not limit the jury's discretion in a manner consistent with the requirements of the Eighth Amendment of the United States Constitution. *See Maynard v. Cartwright*, 486 U.S. 356, 108 S.Ct. 1853 (1988).

A death sentence may not be returned based on "passion, prejudice, or any other arbitrary factor." 12 O.S. 1987 Supp. § 701.13(c). The unrestricted use of the unfairly prejudicial and inflammatory evidence of unadjudicated offenses in a capital murder second stage proceeding does not provide the necessary safeguards to insure that the death penalty will not be imposed in an arbitrary and capricious manner. In fact, there is nothing more arbitrary than to ask a jury to sentence someone to death as a result of another crime that the defendant may or may not have been involved in committing. Ultimately, such a position is asking a jury to "guess" a person onto death row.

Despite the Paxton decision, there is no automatic rule of inclusion of all unadjudicated offenses in the second stage proceedings of a capital murder trial. There is no Oklahoma statutory or case authority that relieves the trial judge from ruling on the reliability of evidence to be admitted at trial. Rulings on reliability and admissibility of all evidence are the primary discretionary judicial function of all trial judges. All unadjudicated offenses inherently have questions concerning reliability and admissibility that must be weighed by the trial judge. The

proposed unadjudicated offenses offered by the State in this case have absolutely no guarantee of reliability and should be excluded as a matter of law.

**WHEREFORE**, premises considered, the Accused respectfully requests this Court to strike all unadjudicated offenses alleged in support of the "continuing threat" aggravating circumstance.

Respectfully submitted,

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James T. Rowan, OBA #7787  
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P.O. Box 926  
Norman, OK 73070-0926  
(405) 329-4272  
**ATTORNEY FOR JOSHUA D. STUMP**

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James T. Rowan  
James T. Rowan

MICROFILM ROLL # \_\_\_\_\_ PAGE# 212

IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

FILED  
8:55 AM  
JAN 12 1996  
Linda Siler, Cl. Clk. Lincoln Co., Okla.  
By [Signature] Deputy

STATE OF OKLAHOMA, )  
)  
Plaintiff, )  
)  
-vs- )  
)  
JOSHUA D. STUMP, )  
)  
Defendant. )

Case No. CF-95-104

MOTION IN LIMINE REGARDING  
INTRODUCTION OF AUTOPSY PHOTOGRAPHS

The Defendant, Joshua D. Stump, moves this Court for an order prohibiting the introduction of photographs taken during the autopsy of the victim for the following reasons:

1. What is depicted in the autopsy photographs may be proven through the less prejudicial evidence of the pathologist's testimony and is merely cumulative in nature and has no probative value in establishing any issue in the instant case.
2. The autopsy of the deceased victim was photographed in color when black and white photography was available.
3. The autopsy photographs have scant probative value, if any, and the principal effect of inflaming and arousing the passion of the jury due to their gruesome and ghastly nature can only cause prejudice towards the Defendant and deprive him of his right to a fair trial.

**WHEREFORE**, based on the foregoing grounds, the Defendant prays that this Motion be sustained.

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**Authorities:**

12 O.S., §§ 2402-3  
8th and 14th Amend., U.S. Const. and corresponding  
clauses of the Okla. Const.  
Oxendine v. State, 335 P.2d 940 (Okl. Cr. 1958)  
Ritchie v. State, 632 P.2d 1244 (Okl. Cr. 1981)

Respectfully submitted,

James T. Rowan  
James T. Rowan, OBA #7787  
Oklahoma Indigent Defense System  
Capital Trial Division  
P.O. Box 926  
Norman, OK 73070-0926  
(405) 329-4272  
ATTORNEY FOR JOSHUA D. STUMP

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James T. Rowan  
James T. Rowan

MICROFILM ROLL #          PAGE# 5744

IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA, )  
)  
Plaintiff, )  
)  
-vs- )  
)  
JOSHUA D. STUMP, )  
)  
Defendant. )

Case No. CF-95-104

FILED  
JAN 12 1996  
By *L. Stump*  
Lincoln Dist. Ct. Clerk  
Lincoln Co. Okla.  
Deputy

MOTION IN LIMINE  
RE: CALDWELL

COMES NOW the Accused, Joshua D. Stump, and moves this Court to prohibit the prosecutor from making comments to the jury during voir dire, opening statements, closing argument or at any other time that would violate or offend the rule of Caldwell v. Mississippi, 472 U.S. 320, 105 S.Ct. 2633 (1985). The prosecutor cannot communicate in any form to the jury that the sentence of death will not be imposed or in any way lessen or change the jury's responsibility in sentencing the Accused.

WHEREFORE, premises considered, the Accused asks this Motion be granted.

Respectfully submitted,

*James T. Rowan*  
James T. Rowan, OBA #7787  
Oklahoma Indigent Defense System  
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Norman, OK 73070-0926  
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ATTORNEY FOR JOSHUA D. STUMP

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MICROFILM ROLL # 41 PAGE# 1945

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James T. Rowan

MICROFILM ROLL # 41 PAGE# 746

IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA, )  
 )  
 Plaintiff, )  
 )  
 -vs- ) Case No. CF-95-104  
 )  
 JOSHUA D. STUMP, )  
 )  
 Defendant. )

FILED  
 JAN 22 1996  
 By Linda Sizer, Clk. Clk., Lincoln Co. Okla. Deputy

MOTION TO ALLOW VOIR DIRE ON THE  
 COST-EFFECTIVENESS OF THE DEATH PENALTY

COMES NOW the Defendant, Joshua D. Stump, and moves this Court for an order granting voir dire on the cost-effectiveness of the death penalty.

The Defendant proposes that the following questions be directed to all veniremen who are called for jury duty in the instant case:

1. Do you have an opinion as to whether it costs you, as a citizen, more or less money to keep a person convicted of Murder in the First Degree in prison for life rather than execute him?

If the answer to question No. 1 is yes, the following questions should be directed to the veniremen;

2. What is that opinion and the basis for it?
3. Are you aware of recently published reports that show conclusively that it costs six times as much money to execute a person than it does to place them in prison for life?
4. If called upon to deliberate in the sentencing stage as to punishment, can you set aside your opinion and consider only the evidence that is presented to you?

In support of this Motion, Defendant states the following:

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1. There have been recent economic studies and surveys conducted in numerous states across the United States on the cost-effectiveness of the death penalty.

2. These reports show conclusively that it costs, conservatively, six times more money to execute a person as opposed to life imprisonment.

3. These reports have been made public through the various media agencies throughout the local area and the United States.

A significant number of people in Lincoln County and across the United States labor under the misconception that it costs less money to execute a person convicted of Murder in the First Degree than it does to place that person in prison for life.

Defendant contends that allowing jurors to deliberate in the death penalty sentencing stage under the misconception that it is cheaper to execute the defendant rather than give him a life sentence violates the fundamental due process requirement that a defendant not be sentenced on the basis of information which he has no opportunity to explain.

WHEREFORE, Defendant prays that this Motion be granted based upon the foregoing grounds.

**Authority:**

8th and 14th Amends., U.S. Const. and the corresponding clauses of the Okla. Const.

Gardner v. Florida, 430 U.s. 349, 97 S.Ct. 1197 (1977)

Lockett v. Ohio, 438 U.S. 586, 98 S.Ct. 2954 (1978)

Eddings v. Oklahoma, 455 U.s. 104, 102 S.Ct. 869 (1982)

Skipper v. South Carolina, 476 U.s. 6, 106 S.Ct. 1669 (1986)

Respectfully submitted,

James T. Rowan  
James T. Rowan, OBA #7787  
Oklahoma Indigent Defense System  
Capital Trial Division  
P.O. Box 926  
Norman, OK 73070-0926  
(405) 329-4272  
ATTORNEY FOR JOSHUA D. STUMP

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James T. Rowan  
James T. Rowan

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MICROFILM ROLL # 41 PAGE# 1909

IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA, )  
)  
Plaintiff, )  
)  
-vs- )  
)  
JOSHUA D. STUMP, )  
)  
Defendant. )

Case No. CF-95-104

FILED  
JAN 21 1996  
Lincoln Stier, Ct. Clerk, Lincoln Co. Okla.  
By [Signature] Deputy

**MOTION TO ENJOIN VICTIM'S FAMILY  
AND/OR VICTIM'S RIGHTS ADVOCATES FROM SHOWING EMOTION  
IN THE COURTROOM WHILE SITTING AS SPECTATORS  
AND BRIEF IN SUPPORT THEREOF**

COMES NOW the Accused, Joshua D. Stump, by and through his attorney, and moves this Court pursuant to the Sixth Eighth, and Fourteenth Amendments to the United States Constitution and Article II, §§ 7, 9 and 20 of the Oklahoma Constitution to order the State to instruct the victim's family not to sit directly before the jury and not to openly show any emotion or to make any prejudicial expressions while sitting in the courtroom during the course of the trial. In support of this motion, the Accused states as follows:

**ARGUMENT AND AUTHORITY**

It is well-settled that a death sentence should be imposed as a "reasoned moral response" to the evidence presented during jury trial. California v. Brown, 479 U.S. 538, 545, 107 S.Ct. 837, 841 (1987); *See also* Penry v. Lynaugh, 492 U.S. 302, 109 S.Ct. 2934 (1989). Further, any decision to impose the death penalty must "be, and appear to be, based on reason rather than caprice or emotion." Gardner v. Florida, 430 U.S. 329, 358, 97 S.Ct. 1197, 1204 (1977).

To allow the victim's family and friends and/or victim's rights advocates to sit in the courtroom and cry or show other types of emotions will cause the jury to be sympathetic toward

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the victim's family in such a manner that it will be highly prejudicial to the Accused and risk a verdict impermissibly based on passion, not deliberation. Brown, supra. Allowing this type of emotional, public display in the courtroom is violative of the Accused's due process and Eighth Amendment rights and his rights under Article II, §§ 7 and 9 of the Oklahoma Bill of Rights.

To permit the victim's family and friends and/or victim's rights advocates to sit in the courtroom and show all of these various types of emotions would deprive the Accused of his Sixth Amendment right to a fair and impartial jury and of his entitled presumption of innocence. Estelle v. Williams, 425 U.S. 501, 96 S.Ct. 1691 (1976).

For this Court to instruct the victim's family and friends and/or victim's rights advocates to conduct themselves like any other spectator and to not sit directly before the jury will in no way prejudice the State's case and will in no way interfere with a public trial.

**WHEREFORE**, premises considered, the Accused requests this Court, prior to voir dire, to order the State to instruct the victim's family and friends and/or victim's rights advocates not to sit directly before the jury and to refrain from making any show of emotion whatsoever in the courtroom while the jury is present.

Respectfully submitted,

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Norman, OK 73070-0926  
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**ATTORNEY FOR JOSHUA D. STUMP**