

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

KIM HILL, et al.,)	
Plaintiff,)	CIVIL ACTION
v.)	FILE NO. 16-C-04179-S2
)	
FORD MOTOR COMPANY, et al.,)	
Defendant.)	

**ORDER ON PLAINTIFFS' MOTION IN LIMINE TO PREVENT DEFENSE
ARGUMENT AND INSINUATIONS ABOUT EXHUMATIONS & AUTOPSIES**

Plaintiffs' Motion in Limine to Exclude to Prevent Defense Argument and Insinuations About Exhumations & Autopsies having been heard, after considering the motions, Defendants' responses thereto, the arguments of counsel, all matters of record and the applicable and controlling law, the Court finds as follows.

Plaintiffs' motion requested "that the Court preclude any defense reference, argument, innuendo, or questioning about the exhumations of decedents' bodies beyond a statement that 'exhumations of Mr. and Mrs. Hills' bodies were done on July 2, 2015, so that the bodies could be autopsied July 3, 2015, and that following the autopsies, the bodies were reburied in the same plots.'" Plaintiffs additionally asked that Defendants "specifically be prohibited from arguing or suggesting that the exhumations and autopsies were done 'in secret,' that evidence was 'spoliated,' that Plaintiffs authorized the exhumations, or that defendants should have been participants."

Neither party shall reference the exhumations of decedents' bodies, beyond limited statements resembling that suggested by Plaintiff. Defendants shall not indicate that Plaintiffs' authorized the exhumations, or otherwise gratuitously interject the fact of exhumation at trial.

The jury may hear, however, that Plaintiffs' requested or authorized the autopsies. Defendants shall not suggest that the autopsies were conducted clandestinely, or surreptitiously.

Defendants shall not suggest that they were excluded from the autopsy by Plaintiffs. Defendants shall not allude to facts designed to portray the autopsies as gruesome. Accordingly, no reference shall be made to the treatment of the decedents' bodies (or parts thereof) before, during or upon conclusion of the autopsies, except concerning the scientific testing and examination thereof.¹

Defendants may cross-examine Plaintiffs' experts concerning scientific methods, and concerning the analyses yielding scientific conclusions, brought to bear during and after the autopsies. The Court will take up at trial, whether Defendants' experts may testify that the Plaintiff-authorized autopsies foreclosed their ability to conduct desirable tests or examinations. In considering whether to admit such testimony, the Court will expect Defendants' experts to affirm that the precluded tests or examinations might have yielded meaningful results, if conducted after May 11, 2016.² To the extent that such explanations are allowed, Defendants shall not intimate any fault or motive on the part of Plaintiffs, with regard to the autopsies.


As for spoliation, the Court finds no reason why either party should use the term "spoliation," at trial. Georgia's spoliation presumption, however, is the same regardless of the party's intent when destroying the evidence. In fact, the spoliation presumption arises against a party who simply "contributes" to the loss of records. American Cas. Co. of Reading, Pa. v. Schafer, 204 Ga. App. 906 (1992). Because the parties have not argued the issue of spoliation, *per se*, the Court cannot foreclose the possibility that, at the conclusion of evidence, it will consider giving the jury a tailored version of the suggested pattern charge on spoliation, pursuant to O.C.G.A. § 24-14-22.

¹ Counsel are particularly admonished not to discuss the post-autopsy handling of the decedents' organs, in a manner resembling that adopted by Ford's counsel at the hearing on Plaintiffs' motion.

² The date that Defendants' experts first discussed the possibility of an independent autopsy.

WHEREFORE, Plaintiff's hereby GRANTED, according to the parameters stated above.

SO ORDERED, this 19 day of January, 2018.


Shawn F. Bratton, Judge
State Court of Gwinnett County

cc:

BERLAND, AUDREY K, Bar Number: 591485
BIBBINS, WALTER J, JR, Bar Number: 056308
BUTLER, JAMES E, JR, Bar Number: 099625
DAVIDSON, GERALD, JR, Bar Number: 206600
EADY, MICHAEL W, Bar Number: TX06332400
GRAY, MICHAEL G, Bar Number: 306282
MALEK, PAUL F, Bar Number: MALEK
MCDANIEL, CHRISTOPHER B, Bar Number: 101357
PEAK, BRANDON L, Bar Number: 141605
ROHWEDDER, DAVID T, Bar Number: 104056
THOMAS, D ALAN, Bar Number: THOMAS