

IN THE DISTRICT COURT  
FRANKLIN COUNTY KANSAS

STATE OF KANSAS, )  
 Plaintiff, )  
 v. )  
 KYLE T. FLACK, )  
 Defendant. )

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Case No. 13CR 104

**MOTION FOR DISCOVERY**

COMES NOW the Defendant, Kyle Flack, by and through his counsel, and moves this Court to Order the government to identify and produce the entire discovery requested, and otherwise comply with the requirements of federal, state and ethical provisions relating to discovery in criminal cases.

Authority

Regardless of any specific request by the defense or ruling by the Court, the prosecution has an affirmative duty to timely disclose any exculpatory evidence to the defense. Brady v. Maryland, 371 U.S. 812 (1962); Kyles v. Whitley, 115 S.Ct. 1555 (1995). The duty to disclose this evidence increases when the Accused makes specific requests. U.S. v. Agurs, 427 U.S. 97 (1976). The duty under Brady and Kyles is *on-going* and not limited by any scheduling or deadlines set by the Court, by trial, or even by conviction. Mooney v. Holohan, 294 U.S. 103 (1935).

The prosecution is responsible for any evidence or knowledge held by any agent of the State of Kansas; that knowledge is imputed to the individual prosecutor in this case, and it is that

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prosecutor's duty to see that all evidence covered by Brady, Kyles, or by any Order of this Court is identified and produced. Giglio v. U.S., 405 U.S. 150 (1972).

### Definitions

As used and intended in this and other discovery requests by the Defendant:

1. "Government" shall include:

A. The office of the Attorney General and the office of the Franklin County Attorney, including all present and former assistants, investigators, and employees;

B. Any person presently or formerly working as an agent, on contract, or on the authority of the prosecuting authority;

C. Every law enforcement personnel presently or formerly employed by the federal, state, county or municipal governments, including without limitation the Ottawa City Police Department, Franklin County Sheriff's Department, the Kansas Bureau of Investigation, Federal Bureau of Investigation, Kansas Attorney General, or any and all other law enforcement agencies;

D. Every person presently or formerly working as an agent, employee, informant, or on behalf of, or subject to the control of any law enforcement personnel, including without limitation all civilian employees, private citizens working at the governments direction, security guards, persons in training, and/or members of law enforcement auxiliaries, Fraternal Order of Police, and organized citizens' anti-crime groups.

2. "Identify" shall mean:

A. With regard to a document, the author, date of creation, respective revisions or addendums, and the current location and custodian of the original documents;

B. With regard to a photograph, the photographer, date exposed, date developed, all witnesses to the photographs being taken, and current location and custodian of the original negative;

C. With regard to an audio or visual recording, the persons present, date recorded, all unedited tape and any edited versions, date transcribed, the current location and custodian of the original, unedited tapes;

D. With regard to computer created data, the operating system, the application program, all data produced, the current location and custodian of the original;

E. With regard to a statement or conversation, every person present, the dates, and all documents and/or other records reflecting contents, and the current location and custodian of the original;

F. With regard to property or contraband, a detailed description of the item, and its present location and custodian;

G. With regard to persons or witnesses, the name, home and work addresses, home and work telephone numbers, and any other locating and identifying information available.

3. "Produce" shall mean:

A. With regard to a document, provide a complete and *legible* photocopy of both sides of each page, or make the original available for inspection and copying;

B. With regard to a photograph, make the negative available for printing; provide a positive copy, or make the original positive available for copying;

C. With regard to an audio or video recording, provide a copy [standard audio, micro cassette audio, compact disc audio, or VHS video, or DVD video format, or make the originals available for copying; any and every complete or partial transcript prepared, the name of the transcriber, date transcribed.

D. With regard to computer created data, provide a disk copy of the operating system, application program and data, or make the originals available for inspection and copying;

E. With regard to a statement or conversation, provide the contents of the communication; identify the time, place, persons present, and method of recording;

F. With regard to property, make it available for preliminary inspection, recording and examination, and arrangements for necessary later testing and inspection;

4. "Report" shall include:

A. All documents, whether in the form of rough notes or field notes, typed summaries, or prepared forms recording the activities of government personnel and statements of witnesses;

B. All video and audio records prepared or made in connection with this case;

C. Any recorded information reflecting the transfer or receipt of evidence.

5. "Statement" shall include:

A. Spontaneous or voluntary utterances;

B. Questions and respective answers;

C. Conversations or discussions;

D. Actions that is declaratory or communicative;

6. "Contents" shall include:
  - A. When referring to a statement, the gist, summary, paraphrase or transcript of the statement, conversation or discussion;
  - B. When referring to a document, the complete text of the document and all other documents referred to within the text of the primary document.
7. "Document" shall include:
  - A. Any writing, recording or data in any form or medium, whether privileged or not;
  - B. Any original of the document, and preliminary, final or intermediate drafts;
  - C. The original or any copies or edited versions that bear any marks (i.e., stamps, initials, notations) not a part of the original text;
  - D. Working papers, correspondence, memos, directives, transcripts, analysis, studies, surveys, reports, charts, notes, meeting minutes or agendas, desk calendars, appointment books, microfilm or microfiche, printouts, and press releases.
8. "Relating to" includes discussing, informing, sharing, instructing, directing, referring to, containing, analyzing, connected to or connected with, studying, reporting on, commenting on, evidencing, constituting, setting forth, considering, concerning, relevant to, bearing on, pertaining to, in whole or in part;
9. "Every", "any", "each" and "all" is interchangeable and inclusive of the others;
10. "And" means "and/or", and "or" means "and/or";

11. "This case" means Franklin County case number 13 CR 104, and law enforcement case numbers related to the above cases, all investigation of Mr. Flack relating to, prior to, leading to, during, and subsequent to his arrest.

Specific Requests

The Accused asks this Court to Order the government to identify and produce the following:

Brady and other material

Identify and produce all information discoverable pursuant to the law as set out above, and evidence available under the Kansas Open Records Act, KSA 45-215 et seq.

Identify and produce any information that exculpates or inculpates the Accused's actions, intent, or culpability related to this case or the punishment sought;

Identify and produce all information tending to impeach the credibility of any witness, whether that impeachment is admissible or not, including any inconsistent or contradictory statements, whether sworn or not; this also includes any rap sheets, criminal history, reputation for untruthfulness or specific incidents of untruthfulness.

Witnesses:

All persons with any knowledge relating to the events leading to or surrounding the alleged crimes at issue;

All persons who will or may testify at trial;

All persons who have been contacted by the government relating to this case subsequent to the events leading to or surrounding the alleged crimes at issue;

All law enforcement officers who were ever present at any of the scenes at issue;

All persons who spoke with or communicated with the Accused during or after his arrest;

Identify and produce any lie detector or polygraph test administered or attempted to any person related to this case;

Identify and produce any hypnosis or other memory enhancement or attempts at such administered to any person related to this case;

Statements:

Identify and produce the contents of all written, recorded, oral, signed or adopted statements, sworn or not, of any person or witness, together with any report or document reflecting the contents of such statement;

Identify and produce the contents of all statements made by the government to Mr. Flack, together with any report or document reflecting the contents of each statement.

The Accused:

Identify and produce any statement made by Mr. Flack, any evidence taken from his person or his residence or any other place where he maintains an expectation of privacy, including any property taken at the time of his arrest or booking or obtained while incarcerated in the Franklin County Jail;

Tangible Evidence:

Identify and produce each item of tangible evidence relating to this case and the contents of each inventory of property or evidence prepared relating to this case.

Recordings, Photographs or Electronic Information:

Identify and produce each audio, video or electronic communication or recording related to this case, together with any report or document reflecting the recording, whether or not the recording is admissible as evidence, including any audio or video recording of the Accused;

Identify each photograph exposed:

- at the scenes of the alleged offenses,
- prior to the alleged offenses related to this case;
- at arrest or booking or depicting the Accused,
- depicting any person, evidence or exhibit related to this case

Identify and produce all dispatch, 911, emergency vehicle, car-to-car or other law enforcement or medical or emergency communications regarding this case.

Scientific and Technical Investigations

Identify and produce all evidence gathered that has been, is, or will be subject to further scientific or technical evaluation or testing, together with reports or documents reflecting the gathering, transfer and custody of that evidence, and the request for further testing;

Identify and produce any testing, comparison, evaluation of any physical evidence or electronic communications and their analysis', the process, the processor, any results, opinions, or conclusions, and any reports or documents reflecting same.

Weapons

Identify and produce all efforts to identify any weapon(s), ammunition, or projectile(s) related to this case;

Identify all weapons involved or related to this case;

Fingerprints, Shoeprints

Identify and produce any efforts to identify fingerprints, palm prints, shoe prints, or other prints related to this case, together with reports reflecting the gathering, comparison, and results;

Hairs, Fibers, and Body Fluids

Identify any efforts to identify hair, fibers, fluids or other physical evidence including but not limited to DNA evidence related to this case, together with any reports or documents reflecting these efforts, any testing, comparisons or results;

Medical Reports

Identify and produce all evidence relating to the history of the decedent(s), including:  
any disabilities or medical problems suffered previously,

Identify and produce all evidence relating to the autopsy of the deceased;

Warrants and Notices

Identify and produce any testimony, declaration, application or affidavit in support of any arrest, search, seizure or electronic warrant related to this case, including any which were rejected or refused by any court;

Identify and produce all returns from any warrant, together with any reports or documents reflecting the issuance, service and execution of any warrant in this case.

Identify any arrest, search or seizure in this case that occurred without a warrant.

Other

Identify and produce all charts, graphs, maps, summaries that relate to this case;

Identify and produce any evidence, favorable or unfavorable to the Accused which has not been described in other paragraphs of this motion.

Application

All material and evidence requested by this motion should be preserved and not destroyed, altered, or depleted, whether or not the defense request is granted by this Court. By this request, the government is on notice that the requested evidence is material, exculpatory and/or potentially useful in his defense against the charge. If any of the requested or otherwise discoverable evidence, including any Brady or Kyles material, has been lost, destroyed, misplaced or is otherwise unavailable, the government should identify that material, provide as accurate and detailed reconstruction as possible, provide the manner and details of how and when it became unavailable and identify who is responsible for the unavailability.<sup>1</sup>

Should the government refuse to produce any of the requested material, Mr. Flack asks that material be identified and the reasons for withholding be stated on the record in open court, and that material provided to the Court for review. Should this Court, after in-chambers review, determine the requested material is not to be produced, Mr. Flack asks the Court to seal that

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<sup>1</sup> U.S. v. Bohl, 25 F.3d 911-912 (10th Cir. 1994); Brady v. Maryland, 373 U.S. 83 (1963); California v. Trombetta, 467 U.S. 479 (1984); Arizona v. Youngblood, 488 U.S. 51 (1988).

material and make it part of the record. This is necessary for meaningful review of this Court's rulings.

Mr. Flack requests the prosecution be expressly Ordered to contact each and every person and agency identified in paragraph 1 or known to the prosecution, and to require those persons and agencies contacted to produce, identify and deliver to the prosecution all discoverable materials, including discovery ordered by this Court, required by state statute or within the scope of Brady and Kyles, within a reasonable time after being contacted by the prosecution.

Respectfully submitted,



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Tim Frieden, #12022  
Death Penalty Defense Unit  
266 N. Main, Suite 210  
Wichita, Kansas 67202  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>TH</sup> day of Nov., 2014 a true and correct copy of the foregoing was fax filed with the Clerk of the District Court Franklin County (785) 242-5970 and a copy of the motion and fax filing was delivered to:

Julie Furst c/o Franklin County Attorney Office  
Fax (785) 229-8971

And a Chamber Copy to:

Missy Strickler Administrative Assistant to Honorable Eric Godderz  
Fax (785) 448-3230



Tim Frieden #12022