

State's Filing #25
(Motion to Admit Defendant's Statements to Dylan Phillips)

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CLERK OF DISTRICT COURT
FRANKLIN COUNTY, KANSAS

**IN THE DISTRICT COURT OF FRANKLIN COUNTY, KANSAS
FOURTH JUDICIAL DISTRICT**

STATE OF KANSAS,
Plaintiff,

vs.

KYLE TREVOR FLACK,
Defendant.

Case No. 2013 CR 104

**MOTION TO ADMIT DEFENDANT'S STATEMENTS TO
DYLAN PHILLIPS**

At jury trial, Plaintiff intends to introduce statements made by the defendant to Dylan Phillips on April 29th, 2013, concerning the whereabouts of Andrew Stout, and on May 1st, 2013, concerning the whereabouts and activities of Kaylie and Lana Bailey. These statements are relevant and allowed under the admission of parties hearsay exception.

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FACTS

On April 29th, 2013, Dylan Phillips and his mother, Janie Slankard, traveled to Andrew Stout's residence. Their intent was to collect Phillip's personal items from the residence. They arrived at the residence mid-afternoon. The defendant was the only one at the residence. The windows were covered with towels and sheets, except for the one closest to the road. Phillips asked the defendant why Stout was not at the residence and the defendant replied that Stout had to take care of some errands before going to work. (Preliminary hearing testimony of Dylan Phillips, BATES #4076, lines 1 to 3.) The defendant also told Phillips that Stout and Kaylie Bailey had plans for Wednesday, May 1st, 2013, and the defendant was going to watch Lana. (BATES #4076, lines 12 to 17.) Phillips suggested he might help the defendant care for Lana. (BATES #4076, lines 17 and 18.) However, on May 1st, 2013, the defendant and Phillips conversed by phone. The defendant told Phillips that the schedules for Stout and Bailey had changed and there was no longer a need to care for Lana. (BATES #4076, lines 18 to 24.)

ISSUE – ADMISSIBILITY OF THE STATEMENTS

STATUTORY AND CASE LAW

Standard of Review

The admissibility of evidence is within the sound discretion of the trial court. *State v. Martis*, 277 Kan. 267, Syl. ¶ 3, 83 P.3d 1216 (2004). Judicial discretion is abused if judicial action is arbitrary, fanciful, or unreasonable; is based on an error of law; or is

based on an error of fact. *State v. Rodriguez*, 295 Kan. 1146, Syl. ¶ 8, 289 P.3d 85 (2012).

Hearsay Exceptions

Evidence of a statement which is made other than by a witness while testifying at a hearing, offered to prove the matter stated, is hearsay evidence and inadmissible, except under certain circumstances. K.S.A. 60-460, and amendments thereto. One exception is a statement by a person who is a party to the action in the person's individual capacity. K.S.A. 60-460(g), and amendments thereto. "Admissions made by a defendant, if relevant, are admissible under K.S.A. 60-460(g)." *State v. Francis*, 282 Kan. 120, Syl. ¶ 10, 145 P.3d 48 (2006).

ARGUMENT

Plaintiff's theory is that the defendant killed Andrew Stout in the early morning hours of April 29th, 2013, and concealed Stout's body in the southwest bedroom of the residence. Therefore, his statements to Phillips on that date are relevant to the issue of premeditation concerning Stout, specifically, the defendant's actions after the killing. His statement concerning Stout going to work that day is contrary to the documents retrieved from American Eagle Outfitters. Stout's last day of work was April 25th, 2013. He was scheduled to start work at 4:00 p.m., on April 29th, 2013, but did not show. The statement concerning the reason for covering of the windows reveals an attempt to conceal the crime scene from the outside world.

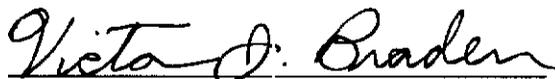
Concerning the defendant's comments about caring for Lana Bailey, Plaintiff's theory is that the defendant lured Kaylie Bailey to Stout's residence on May 1st, 2013, and

killed Bailey and her 18-month-old child, Lana, that afternoon or evening. Scientific evidence confirms a call from Phillips to the defendant on May 1st, 2013, at 1:02 p.m. In addition, other evidence reveals that by the time this phone call was made, the defendant had already lured Kaylie toward the residence. Therefore, his statements to Phillips on May 1st, 2013, are relevant to the issue of premeditation concerning Kaylie Bailey and Lana Bailey, specifically, the defendant's actions before the killings.

CONCLUSION OF THE MOTION

The defendant's statements to Dylan Phillips on April 29th, 2013, concerning the whereabouts of Andrew Stout, and on May 1st, 2013, concerning the whereabouts and activities of Kaylie and Lana Bailey are admissible under K.S.A. 60-460(g), and amendments thereto.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the original State's Motion to Admit the Defendant's Statements (Filing #25) was mailed on the 7th day of November, 2014, to:

The Clerk of the Franklin County District Court
Court Building
301 South Main Street
PO Box 637
Ottawa, KS 66067-0637

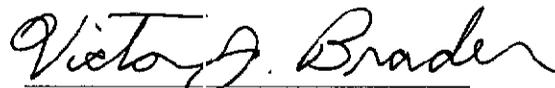
and, I hereby certify that a true and accurate copy of the State's Motion to Admit the Defendant's Statements (Filing #25) was mailed on the 7th day of November, 2014, to:

Ronald F. Evans
Attorney for the defendant
State of Kansas
Death Penalty Defense Unit
700 SW Jackson, Suite 500
Topeka, KS 66603

Timothy Frieden
Attorney for the defendant
State of Kansas
Death Penalty Defense Unit
266 North Main, Suite 210
Wichita, KS 67202

and, I hereby certify that a chamber copy of the State's Motion to Admit the Defendant's Statements (Filing #25) was sent via email on the 7th day of November, 2014, to:

The Honorable Eric W. Godderz
District Court Judge
Anderson County Courthouse
100 East 4th
P.O. Box 305
Garnett, KS 66032



Victor J. Braden, #18524
Deputy Attorney General