

State's Motion # 29
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**IN THE DISTRICT COURT OF FRANKLIN COUNTY, KANSAS
FOURTH JUDICIAL DISTRICT**

STATE OF KANSAS,)
Plaintiff,)
vs.)
KYLE FLACK,)
Defendant.)

Case No. 2013 CR 104

**MOTION FOR PRETRIAL HEARING AND RULING REGARDING THE
ADMISSIBILITY OF GRUESOME PHOTOGRAPHS**

COMES NOW the State, by and through Stephen A. Hunting, Franklin County Attorney, and moves this court to conduct a pretrial evidentiary hearing regarding the admissibility of gruesome photographs which the State intends to introduce at trial. In support of this motion, the State argues:

ARGUMENTS AND AUTHORITIES

The State bears the burden of proving all of the elements of the crimes charged regardless of whether the defendant concedes the cause of death. Consequently, photographs depicting the nature, extent, and number of wounds are generally relevant in a murder case. *State v. Pennington*, 276 Kan. 841, 848, 80 P.3d 44 (2003). K.S.A. 60-407(f) states that all relevant evidence is admissible. Relevant evidence is defined as "evidence having any tendency to prove any material fact." K.S.A. 60-401(b). Although the trial court should take

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special care to avoid the introduction of overly gruesome autopsy photographs, photographs that illustrate the nature and extent of the wounds are admissible when they corroborate testimony or are relevant to the pathologist's testimony regarding the cause of death, even though they may be gruesome. *Pennington*, 276 Kan. at 848, 80 P.3d 44 (2003).

The Kansas Supreme Court, when determining the admission of photographs, indicates that:

Photographic evidence, like other evidence offered at trial, is relevant and generally admissible if the photographs have a reasonable tendency to prove a material fact in the case. *State v. Miller*, 284 Kan. 682, 698, 163 P.3d 267 (2007). Although they may sometimes be gruesome, autopsy photographs that assist a pathologist in explaining the cause of death are relevant and admissible. *State v. Riojas*, 288 Kan. 379, 387, 204 P.3d 578 (2009); *State v. Decker*, 288 Kan. 306, 309, 202 P.3d 669 (2009); *State v. Cavaness*, 278 Kan. 469, 477, 101 P.3d 717 (2004). However, admitting gruesome photographs simply to " 'inflame the minds of the members of the jury' " is error. *Riojas*, 288 Kan. at 387, 204 P.3d 578 (quoting *State v. Boyd*, 216 Kan. 373, 377, 532 P.2d 1064 [1975]). We have also often said that admission of unduly repetitious photographs can constitute an abuse of discretion. *State v. Hill*, 290 Kan. 339, 362, 228 P.3d 1027 (2010). The key, as with prejudice, is the word unduly. Cf. *State v. Clark*, 261 Kan. 460, 478, 931 P.2d 664 (1997) (prejudice expected; only undue prejudice reversible). The admission of photographs in a murder case has rarely been held to be an abuse of discretion. *State v. Sappington*, 285 Kan. 176, 195, 169 P.3d 1107 (2007).

State v. Rodriguez, 295 Kan. 1146, 1157, 289 P.3d 85 (2012).

Furthermore, the Kansas Supreme Court indicates that:

Photographs depicting the extent, nature, and number of wounds inflicted are generally relevant in a murder case. [Citation omitted.] Photographs which are relevant and material in assisting the jury's understanding of medical testimony are admissible. Specifically, photographs which aid a pathologist in explaining the cause of death are admissible. [Citation omitted.] Photographs used to prove the manner of death and the violent nature of the

crime are relevant and admissible. [Citation omitted.] *State v. Parker*, 277 Kan. 838, 847, 89 P.3d 622 (2004) (quoting *State v. Green*, 274 Kan. 145, 147, 48 P.3d 1276 [2002]).

Additionally, because the State has the burden to prove every element of the crime charged, photographs used to prove the elements of the crime, including the fact and manner of death and the violent nature of the crime, are relevant even if the cause of death is not contested. [Citation omitted.] Finally, while we have stated that the " 'wholesale admission of similar grotesque and bloody photographs which(Cite as: 293 Kan. 840, *854, 270 P.3d 1115, *1126) add nothing new to the state's case" is improper,' a photograph need not be excluded simply because it is gruesome. [Citation omitted.]" *Burnett*, 293 Kan. at 853–54, 270 P.3d 1115.

State v. Backus, 295 Kan. 1003, 1013, 287 P.3d 894 (2012).

Kansas courts routinely, and appropriately, place cautionary measures on the admission of gruesome photographs. However, Kansas law is clear that gruesome photographs are admissible if relevant and serve a legitimate purpose, i.e. go to establishing cause or manner of death, identification, etc. Since the State carries the burden to prove each and every element of all crimes charged beyond a reasonable doubt, photographs, however gruesome, should be ruled admissible so long as they aid in proving the elements. So long as the gruesome photographs are not found to be unnecessarily cumulative or only serving the purpose of inflaming the minds of the jury, the photographs should be ruled admissible.

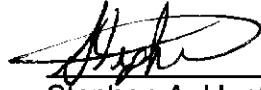
CONCLUSION

The photographs of the victims taken at the crime scene and autopsy are relevant and should be admitted for purposes of establishing identity, cause and manner of death, and in aiding in the testimony of witnesses.

WHEREFORE, the State requests the court set the motion for hearing on April 8, 2015 at 9:00 a.m. and rule on the State's motion. The State further requests that both

parties have all photographs which they may seek to introduce as evidence available, marked, and identified with an exhibit sticker for review by the court and opposing counsel at the time of hearing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the original State's Motion for Pretrial Hearing and Ruling Regarding the Admissibility of Gruesome Photographs was hand-delivered on the 6th day of January, 2015, to:

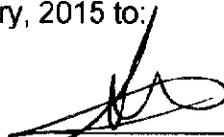
The Clerk of the Franklin County District Court
301 S. Main Street
Ottawa, KS 66067

and, I hereby certify that a true and accurate copy of the State's Motion for Pretrial Hearing and Ruling Regarding the Admissibility of Gruesome Photographs was mailed via USPS on the 6th day of January, 2015 to:

Ronald Evans
Attorney for the Defendant
700 SW Jackson Street - Suite 500
Topeka, KS 66603

Timothy Frieden
Attorney for the Defendant
266 N. Main, Suite 210
Wichita, KS 67202

and, I hereby certify that a chamber copy of the State's Motion for Pretrial Hearing and Ruling Regarding the Admissibility of Gruesome Photographs was delivered to Hon. Eric Godderz on the 6th day of January, 2015 to:



Stephen A. Hunting, #21648
Franklin County Attorney