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

STATE OF KANSAS,
Plaintiff,

vs.

Case No. 2013 CR 104

KYLE TREVOR FLACK,
Defendant.

RESPONSE TO MOTION TO CONTINUE

Plaintiff strongly opposes the defendant's request for continuance of the jury trial. On April 22, 2014, fourteen months ago, this case was set for jury trial to start in September of this year. The intent of the Court on that date was to provide ample time for both parties to prepare for trial and to prevent unnecessary continuances. The Court will not abuse its discretion by denying the defendant's motion.

Doc # 317

FACTS

On April 22, 2014, the defendant waived his right to speedy trial and the Court ordered the jury trial to commence in September 2015.

JURY TRIAL TIMELINE

Based on past capital murder jury trial experiences, the proposed format for jury selection, and the volume of evidence planned to be present by the State, plaintiff estimates that the jury selection will take 12 business days (120 potential jurors based on 10 per day), one business day for jury selection and opening statements, and 12 to 15 business days for the State to present its case during the guilt phase. If a penalty phase is needed, plaintiff estimates that it will take three to five business days.

STANDARD OF REVIEW

"The granting or denial of a continuance in a criminal case is a matter that rests in the sound discretion of the trial court. Absent a showing of prejudice to the defendant, and an abuse of the court's discretion, the ruling of the court will not be disturbed on appeal." *State v. Brown*, 249 Kan. 698, Syl. ¶ 2, 823 P.2d 190 (1991). This standard was further clarified in *State v. Anthony*, where the Kansas Supreme Court found that the "granting of a continuance in a criminal case is within the discretion of the trial court, and its ruling will not be disturbed unless such discretion has been abused and the substantial rights of the defendant have been prejudiced." *State v. Anthony*, 257 Kan. 1003, Syl. ¶ 6, 898 P.2d 1109 (1995).

STATUTORY AND CASE LAW

Under K.S.A. 22-3402, the defendant may request a delay of jury trial. K.S.A. 22-3402(g), and amendments thereto. In addition, K.S.A. 22-3401 states that continuances may be granted to either party for good cause shown. K.S.A. 22-3401, and amendments thereto. The Kansas Supreme Court has consistently focused on one factor that may result in a finding of abuse of discretion – a request for competent counsel. In *State v. Young*, the Kansas Supreme Court found that based on the facts in the case the trial court abused its discretion by denying the defendant's requests for new counsel and a continuance of trial. *State v. Young*, 196 Kan. 63, Syl. ¶ 4, 410 P.2d 256 (1966). However, the Kansas Supreme Court has consistently found no abuse of discretion when the defendant was fully and adequately represented by competent, experienced counsel. *State v. Patterson*, 200 Kan. 176, 180, 434 P.2d 808 (1967).

ARGUMENT

The defendant lists numerous reasons for requesting a continuance. The categories seem to be inability to find expert witnesses, more time to study possible motions, changes within the defense team, and more time to assess discovery.

Plaintiff understands the challenges that the defense team faces in the present case. However, this Court intentionally established an elongated process for motion practice to litigate relevant issues and substantially delayed jury trial to allow both parties to obtain and secure needed evidence and witnesses. Plaintiff has provided the defense with a plethora of discovery in a timely manner and has consistently engaged in motion practice designed to provide time for the defense to adequately react.

The defendant is well-represented by two competent and experienced capital murder defense attorneys. By the time of the June 30, 2015, motion hearing, the defense will still have 71 days before jury selection (if selection starts on September 8, 2015). This is adequate time for the defense team to find needed experts, study further motions, adjust to shifts in the defense team, and review discovery.

Plaintiff is concerned that an elongated continuance will just result in more continuances. Defense counsel states in his motion that a member of the defense team has another capital murder trial in January 2016. In addition, plaintiff is aware that a member of the defense team has a capital murder trial scheduled for late summer 2016.

CONCLUSION OF THE RESPONSE

Plaintiff strongly opposes the defendant's request for continuance of the jury trial. Although not needed in plaintiff's opinion, based on the estimated timeline for jury selection and trial, the Court could provide the defense team an additional month to prepare for jury trial. Under this adjustment, jury selection would start on October 8, 2015. Plaintiff estimates that if the case proceeds all the way through a penalty phase, it will end approximately one or two weeks before the holiday season begins.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the original State's Response to Motion to Continue (Filing #51) was mailed via USPS on the 25th day of June, 2015, 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 Response to Motion to Continue (Filing #51) was sent via email on the 25th day of June, 2015, to:

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

Maban Wright
Attorney for the defendant
State of Kansas
Death Penalty Defense Unit
700 SW Jackson, Suite 500
Topeka, KS 66603

and, I hereby certify that a chamber copy of the State's Response to Motion to Continue (Filing #51) was sent via email on the 25th day of June, 2015, 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