

IN THE DISTRICT COURT OF FRANKLIN COUNTY KANSAS
FOURTH JUDICIAL DISTRICT

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

Case No. 13 CR 104

MOTION FOR A NEW TRIAL

COMES NOW the defendant, Kyle Flack, by and through his attorneys, Tim Frieden and Maban Wright, and moves the Court for a new trial in the captioned matter.

FACTS

1. On March 23, 2016, Mr. Flack was convicted of: Capital Murder (an off-grid person felony in violation of K.S.A. 21-5401(a)(6)); First Degree Premeditated Murder (an off-grid person felony in violation of K.S.A. 21-5402(a)); Second Degree Intentional Murder (a level 1 person felony in violation of K.S.A. 21-5403(a)), and; Criminal Possession of a Firearm (a level 8 nonperson felony in violation of K.S.A. 21-6304(a)(1)).
2. On March 31, 2016, the jury returned a death verdict for the Capital Murder conviction.
3. Sentencing was set for May 18, 2016; the court instructed counsel to file all motions one week prior.

ARGUMENT AND AUTHORITY

A Motion for New Trial is authorized at K.S.A. 22-3501 and timely within 14 days of conviction.

“ The court on motion of a defendant may grant a new trial to the defendant if required in the interest of justice....A motion for a new trial based on any other grounds shall be made within 14 days after the verdict or finding of guilty or within

such further time as the court may fix during the 14-day period.” See K.S.A 22-3501(1).”

A new trial is essential in the interests of justice and owing to multiple trial errors including but not limited to:

1. Denial of the defendant’s Motions for Venue Change;
2. Denial of the defendant’s Motion to Continue;
3. Failure to dismiss multiple jurors for-cause, resulting in defendant’s expenditure of peremptory strikes, including automatic death penalty juror #99152;
4. Failure to grant an additional peremptory strike to allow for the expenditure of a defense strike on juror # 99152;
5. Empanelment of biased jurors;
6. Admission of statements obtained from Kyle Flack in violation of his federal and state Constitutional rights against self-incrimination;
7. Admission of gruesome and prejudicial photographs of the victims, particularly child victim Lana Leigh Bailey;
8. Admission of hearsay evidence regarding statements attributed to victim Kaylic Bailey;
9. Admission of 60-455 evidence as res gestae;
10. Failure to instruct the jury on Voluntary Manslaughter as to Counts II and III;
11. Failure to allow meaningful questioning during the Second Voir dire hearing;
12. Denial of defendant’s requested second stage jury instructions, including a limiting instruction on the scope of first phase evidence that the jury could properly consider.

WHEREFORE, the defendant prays that a new trial be granted and for such further relief as the court may deem appropriate.

Respectfully submitted,

M. Wright

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CERTIFICATE OF SERVICE

I, Maban Wright, certify that I hand-filed and delivered a true and correct copy of the Notice of Appeal to: Stephen Hunting, Franklin County Attorney; Victor Braden, Deputy Attorney General; and the Honorable Eric Godderz on this 17th day of April, 2016.

M. Wright

Maban Wright
Attorney for the Defendant