

State's Filing #21
(Motion to Admit Defendant's Statements to Kenneth Douglas)

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2014 NOV 14 AM 10:30
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
KENNETH DOUGLAS**

At jury trial, Plaintiff intends to introduce statements made by the defendant to Kenneth Douglas on May 6th, 2013, concerning the death of Andrew Stout. These statements are relevant and allowed under the admission of parties hearsay exception.

FACTS

The defendant stayed at Kenneth Douglas' residence in Emporia, Kansas, from the afternoon of May 3rd, 2013, until his detention by law enforcement shortly after midnight on May 8th, 2013. On May 6th, 2013, Douglas received a call from James

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Ross. (Inquisition testimony of Kenneth Douglas, BATES #5029, lines 9 to 17.) Mr. Ross informed Douglas that Andrew Stout was dead. (BATES #5029, lines 9 to 12.) Immediately after receiving the call, Douglas informed the defendant. (BATES #5029, lines 18 to 22.) The defendant expressed outrage upon hearing the news and told Douglas that he would kill those responsible for the death of Stout. (BATES #5029, line 23, to #5030, line 13.)

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).

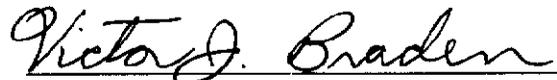
ARGUMENT

The defendant's statements to Kenneth Douglas are relevant to the issue of premeditation concerning Stout, specifically, the defendant's actions after the killing. His reaction to the news from Kenneth Douglas is contrary to the account of events he gave to law enforcement officers on May 8th and 9th, 2013. During these interviews, he acknowledged being present when, according to the defendant, Stout was killed by two other men.

CONCLUSION OF THE MOTION

The defendant's statements to Kenneth Douglas on May 6th, 2013, concerning the death of Andrew Stout 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 #21) 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

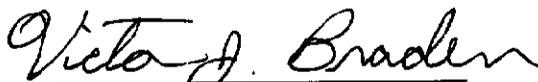
and, I hereby certify that a true and accurate copy of the State's Motion to Admit the Defendant's Statements (Filing #21) was mailed on the 7th day of November, 2014, to:

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 #21) 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


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Deputy Attorney General