

State's Filing #23
(Motion to Admit Defendant's Statements to Karon Anderson)

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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
KARON ANDERSON**

At jury trial, Plaintiff intends to introduce statements made by the defendant to Karon Anderson on May 3rd, 2013, concerning the whereabouts of Andrew Stout. These statements are relevant and allowed under the admission of parties hearsay exception.

FACTS

On May 3rd, 2013, at 6:41 p.m., Karon Anderson, the mother of Andrew Stout, called the defendant. Scientific evidence gathered in this case places the defendant's cell phone in the Emporia vicinity at that time. Anderson informed the defendant that

she had been trying to contact Stout. The defendant informed her that Stout and Kaylie Baylie were "staying in the city." (Interview of Karon Anderson, BATES #0094.)

Scientific evidence collected in this case reveals that immediately before this phone call on May 3rd, 2013, the defendant was exchanging text messages with Andrew Helm. During one exchange, Helm asked the defendant about Stout. The defendant replied "I talk to him yesterday he finally got everybody out of his house has probably just laying low cant blame him!"

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

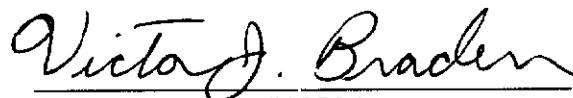
Plaintiffs theory is that the defendant killed Andrew Stout in the early morning hours of April 29th, 2013, and concealed Stout's body in the southwest bedroom of the residence. The defendant then lured Kaylie Bailey (Stout's girlfriend) to the residence on May 1st, 2013, and killed Bailey and her 18-month-old child, Lana. Two days later, the defendant left the residence and traveled to Emporia.

The defendant's statements to Karon Anderson concerning her son's whereabouts are relevant to the issue of premeditation concerning Stout, specifically, the defendant's actions after the killing. He had already killed her son and concealed the body. His statements were intended to keep Anderson and others away from the residence for as long as possible. In addition, his comments are contrary to his account of the killing of Stout given to law enforcement on May 8th and 9th, 2013.

CONCLUSION OF THE MOTION

The defendant's statements to Karon Anderson on May 3rd, 2013, concerning the whereabouts of Andrew Stout are admissible under K.S.A. 60-460(g), and amendments thereto.

Respectfully submitted,



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Attorney for the plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the original State's Motion to Admit the Defendant's Statements (Filing #23) 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

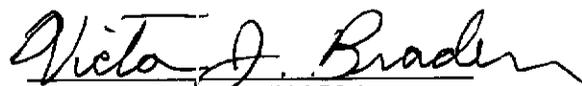
and, I hereby certify that a true and accurate copy of the State's Motion to Admit the Defendant's Statements (Filing #23) was mailed on the 7th day of November, 2014, to:

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 #23) 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