

State's Filing #24
(Motion to Admit Defendant's Statements to Amber Boyer)

CLEARED FOR COURT
FRANKLIN COUNTY, KS
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**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
AMBER BOYER**

At jury trial, Plaintiff intends to introduce statements made by the defendant to Amber Boyer on May 7th, 2013, concerning the whereabouts of Lana Bailey. These statements are relevant and allowed under the admission of parties hearsay exception.

FACTS

The defendant traveled to Emporia on May 3rd, 2013, and stayed at the residence of Kenneth Douglas and Amber Boyer until he was detained on May 8th, 2013. Boyer provided a written statement to law enforcement on August 14th, 2013,

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concerning comments made by the defendant about Lana Bailey. In that statement, she described a conversation that she had with the defendant on May 7th, 2013. The defendant told her that he could not get the baby's face out of his head and didn't know who would take the baby. (Voluntary statement, Amber Boyer, BATES #1814.)

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

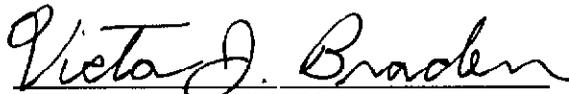
Plaintiff's theory is that the defendant lured Kaylie Bailey to Stout's residence on May 1st, 2013, and then killed Bailey and her 18-month-old child, Lana. Two days later, the defendant left the residence and traveled to Emporia.

The defendant's statements to Amber Boyer concerning Lana Bailey's whereabouts are relevant to the issue of premeditation, specifically, the defendant's actions after the killing of Lana. The defendant's account of Lana's killing that he gave to law enforcement on May 8th and 9th, 2013, revealed that by May 7th, 2013, he was already aware of Lana's demise. These statements were an attempt to deceive Amber Boyer about his knowledge of Lana's death.

CONCLUSION OF THE MOTION

The defendant's statements to Amber Boyer on May 7th, 2013, concerning the whereabouts of Lana Bailey 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 #24) 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

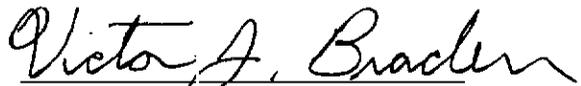
and, I hereby certify that a true and accurate copy of the State's Motion to Admit the Defendant's Statements (Filing #24) was mailed on the 7th day of November, 2014, to:

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 #24) 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


Victor J. Bratten, #18524
Deputy Attorney General