

IN THE DISTRICT COURT OF FRANKLIN COUNTY, KANSAS

THE STATE OF KANSAS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 13 CR 104
Kyle Flack,)	
)	
Defendant.)	

DEFENDANT'S REPSONSE TO STATE'S MOTIONS TO ADMIT HEARSAY STATEMENTS

COMES NOW the Defendant Kyle Flack and in response to the states Motions to admit hearsay statements. Defendant states as follows:

1. Defense objects to all hearsay statements that the State has indicated it intends to introduce. The States motions to admit hearsay evidence is premature. The State proffers what it believes these witnesses' s may testify about. Only in trial and the witness is on the witness stand, under oath and testifies that the witness had a conversation with an unavailable declarant is then an objection valid. The Court cannot at this time rule on any evidence of this type until the question is put to the witness and the witness gives a response regarding the out of court statement.
2. Defense objects to the States motion as to Kaylie Bailey for the same reasons as above. In addition defense objects to this evidence as it assumes that is it Mr. Flack

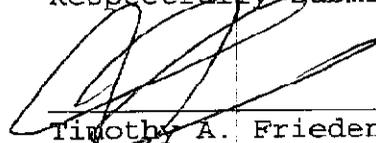
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that is sending the text messages. Such an assumption is speculation. If the State is able to prove such a fact then it does go to the truth of the matter and it is hearsay.

3. Defense further objects to the states motions to admit hearsay evidence in that to present such evidence will violate Mr. Flack's constitutional right to confrontation. As to the Kylie Bailey evidence such appears to be double hearsay combined with a denial of confrontation. As to the other hearsay statements the State is attempting to put in alleged statements of Mr. Flack. They are not for the truth of the matter but rather an attempt to raise inconsistencies between these statements and the statements made by Mr. Flack while in custody to law enforcement. Such an attempt to show inconsistent statements violates the right to confrontation and the right to remain silent. Should Mr. Flack testify then and only then the statements could be used on cross examination to impeach regarding the claimed inconsistent statements.

WHEREFORE defendant, Kyle Flack requests this court deny the motions of the State as to the admission of hearsay evidence.

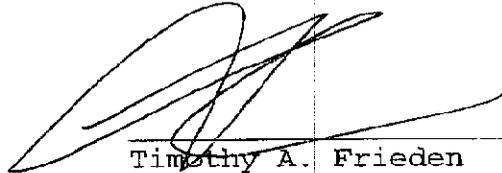
Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Response to the States Motions to admit Hearsay Statements was fax delivered to the Franklin County Clerk of the District Court at (785) 242-5970 and a copy was fax delivered to Julie Furst c/o Franklin County Attorney Office at (785)229-8971 and a bench copy was fax delivered to Missy Strickler Administrative assistant to the Honorable Eric Godderz at (785) 448-3230 this 21st day of Nov., 2014.



Timothy A. Frieden