

Stephen A. Hunting, #21648
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**IN THE DISTRICT COURT OF FRANKLIN COUNTY, KANSAS
FOURTH JUDICIAL DISTRICT**

STATE OF KANSAS,)
 Plaintiff,)
vs.)
))
KYLE FLACK,)
 Defendant.)

Case No. 2013 CR 104

FILED
CLERK OF DISTRICT COURT
FRANKLIN COUNTY, KS
2015 JAN 30 PM 3:42

**STATE'S RESPONSE TO THE DEFENDANT'S MOTION TO PROHIBIT STATE
FROM SEEKING THE DEATH PENALTY DUE TO EVOLVING STANDARDS OF
DECENCY**

COMES NOW the State of Kansas, by and through Stephen A. Hunting,
Franklin County Attorney, in response to defendant's Motion to Prohibit State
from Seeking the Death Penalty Due to Evolving Standards of Decency argues
the following:

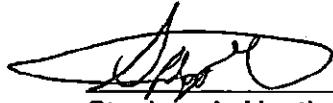
1. In *Kansas v. Marsh*, 548 U.S. 163, 126 S.Ct. 251. 165 L.Ed.2d 429 (2006), the United States Supreme Court issued an opinion reviewing the Kansas Death Penalty Statute in Kansas.
2. In *Marsh*, the United States Supreme Court found the Kansas Death Penalty Statute constitutional. No discussion, in the majority, was had noting the "evolving standards of decency" in formulating its opinion as to the constitutionality of the death penalty in Kansas.
3. The death penalty is an option for certain classifications of homicide in Kansas, and no Kansas court rulings, federal court rulings, or legislative action have

Doc# 273

removed the death penalty as an option for the State to seek if all statutory requirements are met and followed.

WHEREFORE, the State requests this Court follow *Marsh* and overrule the defendant's motion.

Respectfully submitted,



Stephen A. Hunting, #21648
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301 S. Main Street
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Attorney for the plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the original State's Response to Defendant's Motion to Prohibit State from Seeking the Death Penalty Due to Evolving Standards of Decency was hand-delivered on the 30th day of January, 2015, to:

The Clerk of the Franklin County District Court
301 S. Main Street
Ottawa, KS 66067

and, I hereby certify that a true and accurate copy of the State's Response to Defendant's Motion to Prohibit State from Seeking the Death Penalty Due to Evolving Standards of Decency was mailed via USPS on the 30th day of January, 2015 to:

Ronald Evans
Attorney for the Defendant
700 SW Jackson Street - Suite 500
Topeka, KS 66603

Timothy Frieden
Attorney for the Defendant
266 N. Main, Suite 210
Wichita, KS 67202

and, I hereby certify that a chamber copy of the State's Response to Defendant's Motion to Prohibit State from Seeking the Death Penalty Due to Evolving Standards of Decency was delivered to Hon. Eric Godderz on the 30th day of January, 2015 to:



Stephen A. Hunting, #21648
Franklin County Attorney