

Filed
Clerk of Dist Court
Franklin, County, KS

2015 JUN 23 AM 10: 25

IN THE DISTRICT COURT OF FRANKLIN COUNTY, KANSAS
CRIMINAL DEPARTMENT

STATE OF KANSAS,)
)
 Plaintiff,)
)
 vs.) Case No. 13 CR 104
)
)
 KYLE FLACK,)
)
 Defendant.)
 _____)

MOTION TO CONTINUE JURY TRIAL

COMES NOW Kyle Flack, through his counsel, and moves this Court to continue the Jury Trial currently scheduled to begin in September, 2015. In support of this motion Defendant states:

1. Mr. Flack has previously waived his rights to a speedy trial.
2. The State objects to this motion
3. That defense counsel, as of the writing of this motion, is of the opinion the defense will not be prepared for trial in a manner consistent with the standards set by the 5th and 6th Amendments of the United States Constitution and the Kansas Constitution Bill of Rights Section 10.
4. That as of the filing of this motion there are several circumstances that have developed or are evolving that cause this counsel to have concerns as to the progress of trial preparation.
5. That counsel has become aware that a stage 1 forensic expert was found in another jurisdiction not to be qualified to testify. Counsel is now looking for another expert in the

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forensic area.

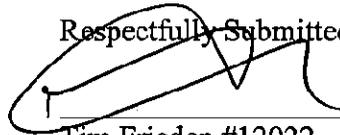
6. That due to the recent ruling in State v Longoria regarding change of venue another study will be conducted in another jurisdiction.
7. That the Defense team mitigation investigator has recently changed. Jeffery Dazey, an attorney with the Board of Indigent Defense Service Northeast Conflicts Office was the original mitigation investigator. Mr. Dazey has been removed from this case due to a development in a going case of State v Cross in Johnson County. Mr. Cross has declined to waive speedy trial and trial has been set to begin in August 2015. Mr. Dazey has been removed from this case to work on the upcoming State v Cross trial. Phillip Hart was added to the defense mitigation team as an investigator in January 2015. Mr. Hart is working diligently however he has other cases with must be investigated as well. Counsel is hopeful but uncertain at this time if the mitigation investigation will be completed by September 2015.
8. That defense counsel Ron Evans has accepted other employment and will no longer be representing Mr. Flack. Mr. Evans is an experienced "death penalty" lawyer and was the chief of the death penalty defense unit for many years. Maban Wright has been added to the defense team and now will set as second chair counsel.
9. That on June 9 2015 the state produced in discovery a report from a forensic entomologist. After reviewing the report defense counsel is seeking its own expert in this area.
10. That recently the state has provided through discovery of recordings of all phone calls and jail visits of Mr. Flack since his arrest May of 2013. These records are voluminous, taking counsel numerous hours to review each month of phone calls and visits.
11. That the State has in its possession potentially exculpatory discovery available for defense

to view. The viewing must be conducted in the office of the county attorney due to the nature of the discovery. This discovery is volumes and will take numerous days to review.

12. Both counsel for Mr. Flack are also representing an individual in another capital case which is set for trial to begin in January 2016.
13. Defense counsel are attempting in good faith to be ready for a September 2015 trial date but question if counsel can provide an effective and Constitutional defense in the current time frame, under the current conditions.
14. That neither party will be prejudiced by the granting of this motion.

WHEREFORE, Mr. Flack moves the Court to grant this motion and to continue the Jury Trial.

Respectfully Submitted;



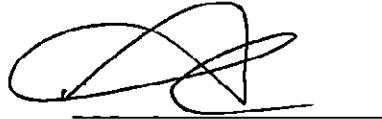
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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2015 a true and correct copy of the foregoing Motion was hand delivered to:

Stephen Hunting Franklin County Attorney

And a chamber copy to Judge Eric Godderz

A handwritten signature in black ink, consisting of several loops and a horizontal line at the end, positioned above a printed name.

Tim Frieden

NOTICE OF HEARING

This matter shall come on for hearing on the 30th day of June, 2015 at 9:00 a.m. or such time thereafter as may be directed by the Court.