

IN THE DISTRICT COURT OF FRANKLIN COUNTY, KANSAS
FOURTH JUDICIAL DISTRICT

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

Case No. 13CR104

MOTION TO SEQUESTER JURY

COMES NOW the defendant, Kyle T. Flack, by and through his attorney, Tim Frieden, and moves the court to sequester the jury during all phases of the trial and any and all deliberations. In support of his motion, the defendant offers the following:

1. Mr. Flack is charged with capital murder and two counts of first degree murder among other charges and the State seeks his death. Because of the State's decision to seek the death penalty against Mr. Flack, he is entitled to and demands his right to heightened due process and heightened reliability throughout this proceeding. Beck v Alabama, 447 U.S. 625, 637-638 (1980).

2. There has been significant prejudicial and inflammatory publicity in this case and Mr. Flack anticipates substantial additional prejudicial publicity before and during the trial. Mr. Flack has moved for a change of venue and that motion was denied.

3. The trial will be lengthy, increasing the chances that jurors will be exposed to publicity or other improper influences during its course. The publicity about the case during the trial will undoubtedly cover matters not admissible in court.

4. K.S.A. 22-3420 contemplates the sequestering of a jury as it provides discretion to the

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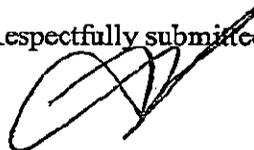
court to allow the jury to separate. In the annotations of the statute Odell v Hudspeth 189 F.2d 300 (1951) is cited saying that while it is a better practice not to permit a jury to separate during the trial of capital case, the fact that the trial court does allow such separation does not void a judgment. The annotations also cites State v Wilson 188 Kan 67 (1961) where it states that it is better practice not to permit jury to separate during a capital trial but the allowance is not reversible unless it is established that it tended to prevent fair and due consideration. The purpose of keeping the jury in one body during the trial and not permitting them to separate except under the supervision of the bailiff is to make sure that nothing they read, see or hear shall influence them in the consideration of the case committed to them. Baker v Hudspeth 129 F.2d 779 (1942).

5. This request is made to ensure that Mr. Flack's constitutional right to a fair trial, an impartial jury, and to due process is protected. U.S. Const. amends V, VI, VIII, and XIV; Kan. Const. Sect. 1, 3, 5, 9 and 10 ; Sheppard v Maxwell, 384 U.S. 333 (1966); Estes v Texas 381 U.S. 532 (1965).

6. Denial of this motion to sequester the jury drastically increases the probability that Mr. Flack will be denied his state and federal constitutional guarantees.

WHEREFORE, the defendant prays that an Order shall issue sequestering the jury at all times in this matter.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Tim Frieden, certify that I delivered a true and correct copy of the Motion to Sequester Jury to: Stephen Hunting, Franklin County Attorney via fax at (785) 229-8971 ; Victor Braden, Deputy Attorney General via fax at (785) 291-3875 on this 3rd day of November, 2015.



Tim Frieden
Attorney for the Defendant

NOTICE OF HEARING

The above Motion to Sequester Jury shall come on for hearing on the 24th day of November, 2015 at 9:00 a.m. before Judge Godderz, Franklin County Courthouse, Fourth Judicial District, State of Kansas or at such time as determined by the court.