

**State's Filing #65  
(Response to Defense Motion on Cost-Effectiveness)**

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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**

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**RESPONSE TO MOTION TO ADDRESS COST-EFFECTIVENESS**

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**Within the established statutory construct of jury selection in a criminal case and existing case law, plaintiff does not object to the defense motion to address the cost of imposing the death penalty as compared to a sentence of life imprisonment. However, the Court should prevent the defense from "staking" out jurors based on case-specific questions designed to disclose or elicit a commitment from prospective jurors concerning how they may vote.**

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**STANDARD OF REVIEW**

Concerning death penalty cases, the standard of review for jury selection is abuse of discretion. *State v. Robinson*, \_\_\_ Kan. \_\_\_, \_\_\_ P.3d \_\_\_, 2015 WL 6829686, at \*120 (No. 90,196).

**STATUTORY AND CASE LAW**

Concerning the questioning itself, the "purpose of voir dire examination is to enable the parties to select jurors who are competent and without bias, prejudice, or partiality." *State v. Hayden*, 281 Kan. 112, Syl. ¶ 3, 130 P.3d 24 (2006).

K.S.A. 22-3410 provides the basis for a challenge for cause. The specific challenge probably most at play in the present case is whether the prospective juror's "state of mind with reference to the case or any of the parties is such that the court determines there is doubt that he can act impartially and without prejudice to the substantial rights of any party." K.S.A. 22-3410(2)(i), and amendments thereto.

Within the context of K.S.A. 22-3410(2)(i), and amendments thereto, in the most recent capital murder — death penalty ruling from the Kansas Supreme Court, the issue of staking out a juror was addressed. *State v. Robinson*, \_\_\_ Kan. \_\_\_, \_\_\_ P.3d \_\_\_, 2015 WL 6829686, at \*85-6 (No. 90,196). Staking out jurors is "the practice of asking case-specific questions designed to commit prospective jurors to a particular vote or to disclose how they would vote when faced with certain case-specific facts." *Id.* at \*85. The Kansas Supreme Court found that limiting this practice falls within the permissible exercise of lawful discretion under Kansas' voir dire statutes. *Id.* at \*88.

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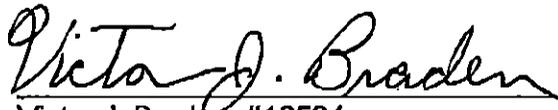
**ARGUMENT**

Plaintiff does not object to addressing a juror's views regarding the cost of imposing the death penalty versus life sentence during voir dire. However, this questioning should be limited to the juror's general views, not to garner a promise from the juror or disclose how he/she would vote. For example, the defense should not be allowed to ask a juror to disclose how he/she would vote if there is testimony that based on the defendant's age it would be X dollars less costly to the state to allow him to live through natural death.

**CONCLUSION**

Within the established statutory construct of jury selection in a criminal case and existing case law, plaintiff does not object to the defense motion to address the cost of imposing the death penalty as compared to a sentence of life imprisonment.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that the original State's Response to Motion on Cost Effectiveness (Filing #65) was faxed the 30th day of December, 2015, to:

The Clerk of the Franklin County District Court  
Court Building  
301 South Main Street  
PO Box 637  
Ottawa, KS 66067-0637

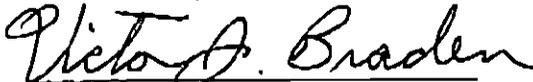
and, I hereby certify that a true and accurate copy of the State's Response to Motion on Cost Effectiveness (Filing #65) was sent via email on the 30th day of December, 2015, to:

Timothy Frieden  
Attorney for the defendant  
State of Kansas  
Death Penalty Defense Unit  
266 North Main, Suite 210  
Wichita, KS 67202

Maban Wright  
Attorney for the defendant  
State of Kansas  
Death Penalty Defense Unit  
700 SW Jackson, Suite 500  
Topeka, KS 66603

and, I hereby certify that a chamber copy of the State's Response to Motion on Cost Effectiveness (Filing #65) was sent via email on the 30th day of December, 2015, to:

The Honorable Eric W. Godderz  
District Court Judge  
Anderson County Courthouse  
100 East 4<sup>th</sup>  
P.O. Box 305  
Garnett, KS 66032

  
Victor J. Braden, #18524  
Deputy Attorney General