

State's Filing #66
(Response to Defense Motion to Address Sentence Length)

Victor J. Braden, #18524
Deputy Attorney General
Criminal Litigation Division
Kansas Attorney General's Office
120 SW 10th Avenue, Second Floor
Topeka, Kansas 66612-1597
Phone: (785) 296-2215
FAX: (785) 291-3875
Email: vic.braden@ag.ks.gov

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

RESPONSE TO MOTION TO ADDRESS SENTENCE LENGTH

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 meaning of sentence length. 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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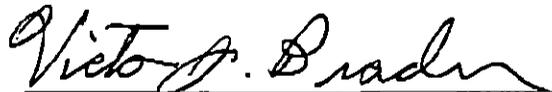
ARGUMENT

Plaintiff does not object to addressing a juror's views regarding the meaning of a capital murder 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 a life sentence in a capital murder case means through nature 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 meaning of a capital murder life sentence based on current statutory law.

Respectfully submitted,



Victor J. Braden, #18524
Deputy Attorney General
120 SW 10th Avenue, Room 200
Topeka, KS 66612
(785) 296-2215
Attorney for the plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that the original State's Response to Motion on Sentence Length (Filing #66) 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

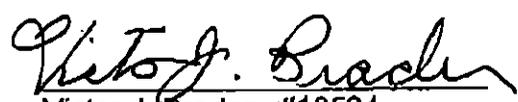
and, I hereby certify that a true and accurate copy of the State's Response to Motion on Sentence Length (Filing #66) was sent via email on the 30th day of December, 2015, to:

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 Sentence Length (Filing #66) 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 4th
P.O. Box 305
Garnett, KS 66032


Victor J. Braden, #18524
Deputy Attorney General