

FILED  
CLERK OF DIST COURT  
FRANKLIN COUNTY, KS  
2016 FEB 17 AM 8:11

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

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

DEFENDANT'S RENEWED MOTON TO CHANGE VENUE

COME NOW defendant and renews his motion to change venue In support of this motion defendant states as follows:

1. In State v Longoria 301 Kan 489, 508 it was held that actual prejudice occurs when the effect of pretrial publicity manifested at jury selection is so substantial as to taint the entire jury pool citing State v Carr 300 Kan 1, 57 (2015) . When faced with a claim of actual prejudice a trial court must review the media coverage and the juror's statements at vior dire to determine whether a community wide sentiment exists against the defendant. 301 Kan at 508 citing Carr at 300 Kan 1, syl 6. In this case most of the prospective jurors had heard of the case. Most of the knowledge of the case came from news media sources. Many had preconceived opinions of guilt based upon information obtained through the media..
2. K.S.A. 22-2616 provides that a trial court should transfer venue when the defendant shows

DOC # 554

so great a prejudice against the defendant that he cannot obtain a fair and impartial trial in that county. 301 Kan at 509-512 citing Carr 300 Kan 81 Syl 10 sets forth a nine factor test. Defense argues that regarding these factors, the publicity has been constant throughout the two and one half years the case has progressed. A previous venue study has been done on Wyandotte County. There the knowledge and coverage was much less. The length of time is has no bearing in this case as the coverage continues up to the present date. Jury selection was difficult in that most people had heard of the case and many had formed opinions. Defense made over 20 challenges for cause that were denied. This offense is the most sever offense and has the most severe and ultimate punishment. WHEREFORE defendant renews his motion to change venue and for the court to find actual and statutory prejudice.

Respectfully Submitted;



---

Tim Frieden, #12022  
Death Penalty Defense Unit  
266 N. Main, Suite 210  
Wichita, Kansas 67202  
316-267-1847 ex 16

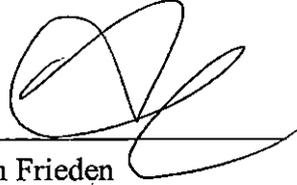
CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of Feb, 2016 a true and correct copy of the foregoing pleading was hand delivered to:

Stephen Hunting  
Franklin County Attorney  
Franklin County Court House  
Ottawa, Kansas

Judge Eric Godderez  
Franklin County Court House  
Ottawa, Kansas 66502

Vic Braden  
Assistant Attorney General  
Franklin county Court House  
Ottawa, Kansas

  
Tim Frieden