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

**STATE OF KANSAS,
Plaintiff,**

vs.

Case No. 2013 CR 104

**KYLE TREVOR FLACK,
Defendant.**

PENALTY PHASE VOIR DIRE PROCESS SUGGESTION

Plaintiff stands by its argument in State's Filing #70 and objects to the defense motion. However, if the Court allows a voir dire between the guilt and penalty phase, plaintiff asks that the following procedure and structure be considered.

NUMBER OF ALTERNATES

Beyond the possible caustic impact of a second voir dire, plaintiff is also concerned about the attrition that may occur because of the 20-day delay between jury selection and the start of the guilt phase, and the up to 26-day jury trial itself. Plaintiff's experience has been that on average one juror is excused per week in a capital murder,

death penalty case. However, the 20-day delay in starting the trial combined with a possible second voir dire could cause variations either way in this calculation. Therefore, plaintiff recommends at least six alternate jurors for the present case.

SECOND VOIR DIRE

Plaintiff stands by its argument in State's Filing #70 and objects to the defense motion. However, if the Court allows for further voir dire between the guilt and penalty phase, plaintiff requests that the following framework be utilized.

COLLECTIVE INSTRUCTION PRIOR TO THE PENALTY PHASE

Plaintiff requests that the Court read the following to the entire jury.

P.I.K. 4d. 54.030

The laws of Kansas provide that when a defendant has been found guilty of capital murder, a separate sentencing proceeding shall be conducted to determine whether the defendant shall be sentenced to death. At the hearing, the trial jury shall consider aggravating or mitigating circumstances relevant to the question of the sentence.

It is my duty to instruct you in the law that applies to this sentencing proceeding, and it is your duty to consider and follow all of the instructions. You must decide the question of the sentence by applying these instructions to the facts as you find them.

INDIVIDUAL QUESTIONING PRIOR TO THE PENALTY PHASE

After P.I.K. 4d 54.030 is read to the entire jury, plaintiff suggests that the Court conduct the following procedure:

1. Ask each juror outside the presence of the others, the following questions:
 - a. "Will you base your decision on whether or not to impose the death penalty on the facts of this case and the law as I instruct?"
 - b. "If instructed, will you consider every mitigating circumstance you individually find to exist?"
2. If the impaneled juror equivocates or the Court perceives equivocation by the juror, then the Court should inquire further to ensure that the fairness of the juror.

CONCLUSION

Plaintiff asks that the Court consider the process described above.

Respectfully submitted,



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Attorney for the plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the original State's Filing #86 was hand-delivered on the 16th day of February, 2016, to:

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

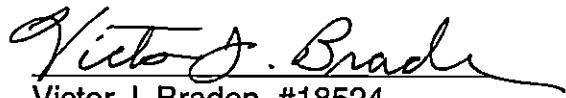
and, I hereby certify that a true and accurate copy of the State's Filing #86 was hand-delivered on the 16th day of February, 2016, to:

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 Filing #86 was hand-delivered on the 16th day of February, 2016, to:

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


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