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CLERK OF DIST. COURT
18TH JUDICIAL DISTRICT
SEDGWICK COUNTY, KS
BY _____

**IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT ~ SEDGWICK COUNTY KANSAS
CRIMINAL DEPARTMENT**

THE STATE OF KANSAS,

Plaintiff,

vs.

TERRY BLUM

Defendant,

Case No. : 13 CR 1664
13 CR 2998

**STATE'S RESPONSE TO DEFENDANT'S MOTION TO
WITHDRAW PLEA**

COMES NOW THE STATE OF KANSAS, by and through its attorney,
Assistant District Attorney, Shannon R. Wilson and respectfully
requests this Court deny the Defendant's Motion to Withdraw
Plea. The State asserts the following arguments and authorities
in support:



FACTUAL BACKGROUND

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2
3 The Defendant was originally charged in Sedgwick
4 County case 13CR1664 with three counts of Aggravated Indecent
5 Liberties, Off-grid, Person Felonies and in Sedgwick County case
6 13CR2998 with two counts of Aggravated Indecent Liberties, Off-
7 grid, Person Felonies and one count of Lewd and Lascivious
8 Behavior, Severity Level 9, Person Felony. A Preliminary Hearing
9 was held in 13CR1664 on July 29th, 2013 in front of the Honorable
10 Gregory Waller, Division 05. After hearing evidence the Court
11 bound the Defendant over as charged. A Preliminary Hearing was
12 held in 13CR2998 on December 19, 2013 in front of the Honorable
13 Bruce Brown, Division 10. After hearing evidence the Court bound
14 the Defendant over as charged. On March 13th, 2014, John Sullivan,
15 the Defendant's attorney, had his Motion to Withdraw as Counsel
16 granted by the Honorable David Dahl, Division 2. The Public
17 Defender's Office was appointed on March 24, 2014. Jason Smartt
18 appears as Attorney of Record for the Defendant on April 8th,
19 2014. Subsequently a number of Motions were filed by Mr. Smartt
20 (herein after referred to as Defense Counsel), including but not
21 limited to Motion to Reduce Bond, Motion in Limine, Motion for
22 Order of Sequestration and Notice of Request for Criminal
23 History. On October 10th, 2014, the cases were set for a "firm"
24 jury trial date. The cases were continued by the defense to
25

1 January 5th, 2015 for a "firm" jury trial date. The cases were
2 continued by the defense to January 12th, 2015 for a "firm" jury
3 trial date. The Defendant entered guilty pleas pursuant to
4 Alford on both cases January 6th, 2014, taken by the Honorable
5 Christopher Magana, Division 9. The Motion to Withdraw Plea was
6 filed March 6th, 2015, prior to sentencing.

7
8 Argument and Authorities

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10 Pursuant to K.S.A. 22-3210(d) (1), "a plea of guilty or
11 nolo contendere, for good cause shown and within the discretion
12 of the court, may be withdrawn at any time before sentence is
13 adjudged." In order for a Court to determine whether the "good
14 cause" standard has been met, the Supreme Court has provided the
15 Edgar factors: "(1) whether the defendant was represented by
16 competent counsel; (2) whether the defendant was misled,
17 coerced, mistreated, or unfairly taken advantage of, and (3)
18 whether the plea was fairly and understandingly made." State v.
19 Edgar, 281 Kan. 30, 127 P.3d 986 (2006). "All of the Edgar
20 factors need not apply in a defendant's favor in every case, and
21 other factors may be duly considered in the district judge's
22 discretionary decision on the existence or nonexistence of good
23 cause." State v. Aguilar, 290 Kan. at 513, 231 P.3d 563.
24
25

1 With respect to the first *Edgar* factor, the Defendant
2 argues that his counsel "failed to meaningfully investigate the
3 facts" *Defense Motion, pg. 3*. A review of the jail visitation
4 log for the Defendant while at the Sedgwick County Adult
5 Detention Facility shows numerous visits by both defense counsel
6 and defense investigators during the pendency of the case, copy
7 provided to Court and Counsel. The Defendant argues a plea to a
8 216 month prison sentence "suggests a lack of advocacy", *Defense*
9 *Motion, pg. 3*. The State would suggest when considering the
10 potential sentence in these cases, securing a plea offer of 216
11 months is competent advocacy.

12 With respect to the second *Edgar* factor, the Defendant
13 claims because he maintained his claim of innocence he was
14 "coerced" and defense counsel "continually pressured" him into
15 pleading guilty, *Defense Motion, pg. 3*. The fact Defense Counsel
16 secured an agreement allowing the Defendant to plead guilty
17 pursuant to *Alford* demonstrates Defense Counsel's advocacy for
18 the Defendant's position regarding his claims of innocence.
19 Regarding continual pressure claims, Defense Counsel represented
20 the Defendant for approximately ten months. Over the course of
21 his representation he filed numerous motions, including motions
22 made in anticipation of trial, see *Court Record*. Defense Counsel
23 engaged in numerous meetings with the State exploring potential
24 trial issues including, but not limited to, potential 60-455(d)
25

1 witnesses, travel schedules for witnesses as well as providing
2 mitigating information in an attempt to obtain a more favorable
3 plea offer. This does not indicate a single minded drive toward
4 plea. The plea documents indicate they were signed by Defense
5 Counsel and the Defendant on December 28, 2014 but the plea
6 hearing was not held until January 6th, 2015, see Court Record.
7 This clearly shows a period of reflection prior to the hearing.
8 There was no rush to plea.

9 Finally, with respect to the third *Edgar* factor, the
10 Defendant claims his "plea was not fairly and understandingly
11 made", *Defense Motion, pg. 3*. The Defendant again claims he was
12 "coerced", "did not have enough information" and "he had no
13 chance to review his case", *Defense Motion, pg. 4 & 5*. The Court
14 record and transcript of the plea hearing from January 6th, 2015,
15 clearly refute the Defendant's claims. The Defendant's
16 Acknowledgment of Rights and Entry of Plea is an eight page
17 document that details the plea process, the Constitutional
18 Rights being waived, the potential sentence and potential
19 consequences of entering a plea, see Court Record. The Defendant
20 signed this document - twice, see Court Record. The Court went
21 further in the plea hearing, specifically inquiring regarding
22 the document and the defendant's understanding of the document
23 in the following exchange:
24
25

1 THE COURT: Have you read the document entitled
2 Defendant's Acknowledgment of Rights and Entry of
3 Plea?

4 THE DEFENDANT: I have.

5 THE COURT: Did you sign that document?

6 THE DEFENDANT: I did.

7 THE COURT: Did you discuss the document and everything
8 that's in it with Mr. Smartt before you signed it?

9 THE DEFENDANT: I did.

10 THE COURT: Was it your decision to sign the document?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Any questions about it for me or for Mr.
13 Smartt?

14 THE DEFENDANT: No, sir.

15 THE COURT: You understand, by pleading guilty pursuant
16 to Alford, you're giving up your constitutional
17 rights; correct?

18 THE DEFENDANT: Yes.
19

20 *Transcript of Plea Hearing, pg. 7 & 8*

21 The Defendant further argues that he has difficulty reading
22 and understanding and did not receive assistance, *Defense Motion,*
23 *pg. 4 & 5.* This claim is belied by the transcript of the plea
24 hearing:

25 THE COURT: Can you read and understand English?

1 THE DEFENDANT: Yes, sir.

2 *Transcript of Plea Hearing, pg.4*

3 THE COURT: Mr. Smartt is your attorney; correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you fully discussed with him all of
6 the charges against you?

7 THE DEFENDANT: I have.

8 THE COURT: Do you understand those charges?

9 THE DEFENDANT: I do.

10 THE COURT: Have you fully discussed with him all of
11 your rights?

12 THE DEFENDANT: I have.

13 THE COURT: Are you satisfied with his services?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Any complaints about his legal
16 representation?

17 THE DEFENDANT: No, sir.

18 *Transcript of Plea Hearing, pg.4 & 5*

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20 The above cited record also dispels the claim the
21 Defendant's free will was overcome by defense counsel's coercive
22 tactics. Further evidence of this point can be found in the
23 Defendant's acknowledgement on the record this plea was in his
24 best interest:

25 THE COURT: Do you understand that plea agreement?

1 THE DEFENDANT: I do.

2 THE COURT: Do you believe that plea agreement is in
3 your best interest?

4 THE DEFENDANT: Yes, sir.

5 *Transcript of Plea Hearing, pg.6*

6 The Defendant was not unfamiliar with the workings of the
7 District Court or the nature of the proceedings and accompanying
8 documentation. This Defendant had previously pled guilty
9 pursuant to Brady in Sedgwick County case 2010CR3795, see Court
10 Record.

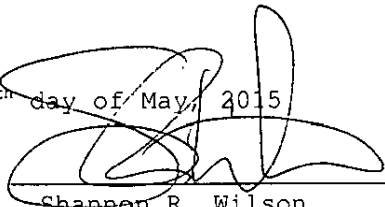
11 After reviewing all relevant documents, presiding over a
12 plea hearing, making specific inquiries of the Defendant,
13 observing the demeanor and interaction of the Defendant and
14 Defense Counsel this Court found:

15 "the defendant understands the nature of the charges
16 against him, the consequences of his plea, and the
17 penalties which may be imposed. And, in open Court, has
18 voluntarily and with understanding waived his
19 constitutional rights and entered a plea of guilty pursuant
20 to Alford to both cases. The court finds there is a factual
21 basis for these pleas, and the defendant is competent to
22 enter these pleas", *Transcript of Plea Hearing, pg.13.*

23
24 There is no cause on which to disturb the Court's findings.
25

1 **For the above stated reasons the State requests the Court**
2 **deny the Defendant's Motion to Withdraw Plea.**

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4 Dated this 6th day of May, 2015

5 
6 Shannon R. Wilson
7 Supreme Court No. 19352
8 Office of the District
9 Attorney
10 535 North Main
11 Wichita, Kansas 67203
12 316-660-3723

13 **CERTIFICATE OF SERVICE**

14 This is to certify that a true and correct copy of the foregoing Response was
15 sent by electronic mail and U.S. mail delivery to Jennifer Chaffee, Attorney
16 for the Defendant, The Swain Law Office, 2311 Wakarusa, Suite J, Lawrence,
17 KS 66044 on this the 6th day of May, 2015.
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