

John Sullivan SC # 21672  
Beall, Mitchell & Sullivan LLC  
1041 N. Waco  
Wichita, Kansas 67202  
Phone: (316) 267-8181  
Fax: (316) 267-3175

FILED  
APP DOCKET NO. \_\_\_\_\_

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CLERK OF DISTRICT COURT  
18TH JUDICIAL DISTRICT  
SEDGWICK COUNTY, KANSAS

IN THE EIGHTEENTH JUDICIAL DISTRICT  
DISTRICT COURT, SEDGWICK COUNTY, KANSAS  
CRIMINAL DEPARTMENT

THE STATE OF KANSAS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TERRY BLUM, )  
 )  
 Defendant. )

Case No. 10CR3795

**MOTION FOR ORDER OF SEQUESTRATION**

COMES NOW Terry Blum, by and through his attorney, John Sullivan, and respectfully moves this Court as part of its inherent power to assure a fair and impartial trial [*see State v. Williams*, 15 Kan. App. 2d 656, 815 P.2d 569 (1991)] to enter an order of sequestration pursuant to *K.S.A. 22-2903* that during the examination of any witnesses or when Mr. Blum is making a statement or testifying that all other witnesses be excluded from the courtroom.

In support of this request, Mr. Blum would state the following:

1. Generally speaking, the question of whether to exclude witnesses or not, and what exceptions may be made, is discretionary with the trial court in the absence of a showing of prejudice. *See State v. Guffey*, 205 Kan. 9, 15-16, 468 P.2d 254 and authorities cited therein; *see also State v. Ralls*, 213 Kan. 249, 253, 515 P.2d 1205, 1208 (1973).

2. Mr. Blum would request an order of sequestration with respect to the subpoenaed witnesses in this case so as to avoid those witnesses from listening and adopting the testimony of prior, testifying witnesses. Such an adoption of testimony by witnesses would substantially prejudice Mr. Blum's right to a fair and impartial trial.

3. Mr. Blum would draw the Court's attention to *State v. Owens & Carlisle*, 210 Kan. 628, 629. 504 P.2d 249, 252:

Appellants' first specification of error is that the court improperly allowed the prosecution witnesses to remain in the courtroom during the presentation of all the evidence despite their twice-repeated request to separate or exclude them. In *State v. Guffey*, 205 Kan. 9, 468 P.2d 254, we dealt with the same complaint. There our review of precedent on the subject led us to conclude that exclusion or sequestration of the witnesses is not a matter of right but lies in the sound discretion of the trial court.

We did state, however, that: '. . . (O)n proper application, timely made, exclusion of witnesses is generally allowed and we believe it to be the better practice.' (p. 16, 468 P.2d p. 261.) *Emphasis added by counsel.*

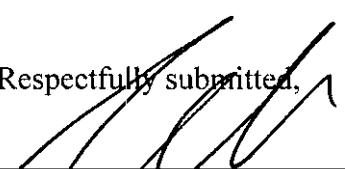
4. Mr. Blum would move the Court to extend this Order to the case detective. Granted, allowing a case detective to sit at counsel table does not constitute a per se abuse of discretion, but Mr. Blum contends that this practice opens the door to possible prejudice. "[I]t is the 'better practice' to discourage law enforcement witnesses from sitting at the prosecutor's table during a jury trial." *State v. Gant*, 201 P.3d673 (2009) (citing *State v. Kirkpatrick*, 286 Kan. 329, 342-43, 184 P.3d 247 (2008)).

5. Finally, Mr. Blum's request comes before his trial's commencement and he would therefore ask the Court to consider his request timely.

WHEREFORE, Mr. Blum requests this Court enter an order that during the examination of any witnesses or when Mr. Blum is making a statement or testifying that all other witnesses be

excluded from the courtroom. Furthermore, Mr. Blum requests the Court to instruct the State of Kansas not to mention, refer to or interrogate concerning or attempt to convey to the jury in any manner, either directly or indirectly, any of the above mentioned facts without first obtaining permission of this Court outside the presence and hearing of the jury. Mr. Blum also requests this Court order the State of Kansas not to make any reference to the fact that this Motion has been filed and sustained or denied. Finally, Mr. Blum requests the Court to order the State of Kansas to inform each and every one of its witnesses about the instant motion, to warn them not to testify or convey to the jury, either directly or indirectly, any of the above mentioned facts and to tell them to follow these instructions.

Respectfully submitted,



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John Sullivan # 21672  
Attorney for the Accused

#### CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing motion was hand delivered to the Sedgwick County District Attorney's Office this \_\_\_ day of October, 2011.



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John B. Sullivan #21672

#### NOTICE OF HEARING

Please take notice and be advised that Mr. Blum's foregoing Motion will be heard at 9:00 a.m. on the 11<sup>th</sup> day of November, 2011 by the Honorable Judge Wilbert.

4/10