

**IN THE DISTRICT COURT OF
MONTGOMERY COUNTY, KANSAS**

**KARENA WILSON and
TRISTAN KOEHN,**

Petitioners,

vs.

**LARRY MARKLE, in his official capacity
as County Attorney of Montgomery
County,**

Respondent.

Case No. 2018-CV-000147

**PETITIONERS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON STANDING
AND ACCOMPANYING MEMORANDUM OF LAW.**

COME NOW Petitioners, by and through their undersigned counsel, and submit the following Motion for Partial Summary Judgment asserting standing and accompanying memorandum of law.

INTRODUCTION

The Kansas diversion statute is clear: “*Each defendant* shall be informed in writing of the diversion program and the policies and guidelines adopted by the district attorney.” K.S.A. § 22-2907 (emphasis added). Respondent Larry Markle conceded in his deposition that his office has never provided such notice to either Petitioner—both of whom took a plea deal and accepted criminal convictions.¹ Hence, Respondent’s failure to provide notice has directly injured them and they have standing to sue.²

¹ Petitioner Karena Wilson accepted a plea deal and was sentenced to probation on December 12, 2017. Petitioner Koehn joined this lawsuit on March 13, 2019 and remained a criminal defendant for an additional 5 months while this litigation was pending—ultimately accepting a plea deal on August 13, 2019.

² Petitioners also assert they have standing to sue in mandamus to compel Respondent to maintain written policies that fully and accurately describe Respondent’s diversion program as implemented. Because Petitioners’ standing argument on that claim is premised on the same theory as the notice claim briefed herein, Petitioners do not address it separately. This brief does make clear, however, that Respondent’s paper policy diverges in significant ways from how it is applied in practice.

This plain-text analysis is sufficient to move on to the merits. However, Petitioners also have standing because they are seeking to clarify important public duties impacting Kansans in real time. Our Supreme Court has held: “*Turning to standing*, this court has allowed original actions in mandamus when the petitioner demonstrates a need to secure a speedy adjudication of questions of law for the guidance of state officers . . . in the discharge of their duties.”³ Given that Respondent is a public officer prosecuting dozens of defendants as we speak while not providing vital, statutorily-mandated diversion information, speedy adjudication via this case and these Petitioners is appropriate.

Finally, Respondent has raised two arguments against standing that both miss the mark. First, neither Petitioner’s claim is moot since both are enduring on-going harms of criminal prosecution—and even if they were not, this is a scenario that is clearly capable of repetition but evading review. Second, Respondent has claimed that Petitioners were not entitled to diversion information because they were not diversion “eligible.” But eligibility is not the statutory requirement—and even if it were, Respondent’s policies, practices, and deposition testimony all confirm that both Petitioners were in fact eligible.

But none of this analysis is necessary. In the end, Petitioners were criminal defendants, and Respondent Larry Markle failed to provide them with information the statute requires for “[e]ach defendant.” Therefore, Petitioners have standing to bring this action, vindicate their rights, and require Mr. Markle to obey the law—just as he requires of everyone else in Montgomery County.

³ *Ambrosier v. Brownback*, 304 Kan. 907, 910, 375 P.3d 1007 (Kan. 2016) (internal quotations omitted) (emphasis added).

STATEMENT OF UNCONTROVERTED FACTS

Petitioner Wilson and Petitioner Koehn were Criminal Defendants Entitled to Diversion Information, and Both are Suffering On-Going Harms Because Respondent Suppressed It

1. Respondent prosecuted Petitioner Tristan Koehn on charges related to a single traffic stop in December 2018. The initial criminal information alleged that Koehn's car contained an open container of alcohol, opiates, and a pipe, and that Mr. Koehn was driving on a suspended license and without valid insurance. (Koehn Information and Journal Entry of Judgment, attached as Exhibit 1).

2. In August 2019, Mr. Koehn pled guilty to misdemeanor transporting an open container; three traffic misdemeanors for registration, suspension, and insurance violations; and misdemeanor attempting to evade law enforcement. (*See* Ex. 1).

3. Respondent concedes that neither he nor anyone else in his office has ever provided Mr. Koehn with written or any other form of notice of Respondent's diversion program, including before he accepted his plea deal. (Markle Depo., attached as Exhibit 2, at 27:25-28:23; Supplemental Responses to Requests for Admission, attached as Exhibit 3, Admission No. 1).

4. In June 2017, Petitioner Karena Wilson was arrested for breaking into a soda machine outside of a liquor store in Independence, Kansas. (Wilson Information, attached as Exhibit 4).

5. Ms. Wilson pled guilty to three counts of misdemeanor theft and received one year probation. (Declaration of Ms. Wilson, attached as Exhibit 5, ¶ 9).

6. Respondent concedes that neither he nor anyone else in his office has ever provided Ms. Wilson with written or any other form of notice of Respondent's diversion program, including before she accepted her plea deal. (Ex. 2 at 27:25-28:23; Ex. 3, Admission No. 2).

7. Ms. Wilson's theft conviction actively prevented her from obtaining a job in the crucial months at the start of her community supervision. (Wilson Depo., attached as Exhibit 6, at

57:3-8). Inability to obtain work, in turn, was the first probation violation Ms. Wilson received during her period of probation. (*Id.* at 47:24).

*Petitioners Were Both Eligible for Diversion under Respondent's
Own Diversion Policy and Past Practices*

8. Montgomery County's diversion policy declares a "broad swath" of crimes eligible for diversion. (Ex. 2 at 47:17-21; County Attorney's Procedure for Diversions, attached as Exhibit 7).

9. Although the Diversion Policy identifies three common diversion-eligible offenses by name,⁴ it does not contain a comprehensive list of every diversion-eligible offense. (Ex. 3, Admission No. 3). Instead, the Policy specifically identifies the crimes that are *not* eligible for diversion and all other offenses are diversion-eligible by default. The diversion policy states, in relevant part, as follows:

e. A Defendant shall not be eligible for Diversion if:

1. The complaint alleges a violation of K.S.A. 8-1567 and amendments thereto and the defendant: (A) Has previously participated in diversion upon a complaint alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute; (B) has previously been convicted of or pleaded *nolo contendere* to a violation of that statute or a violation of a law of another state or of a political subdivision of this or any other state, which law prohibits the acts prohibited by that statute; or (C) during the time of the alleged violation was involved in a motor vehicle accident or collision resulting in personal injury or death; or
2. The complaint alleges that the defendant committed a class A or B felony or for crimes committed on or after July 1, 1993, an off-grid crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity level 1 or 2 felony for drug crimes.
3. If all criteria are met, and
 - a. A Defendant is not represented by an Attorney, the County Attorney's Office or ADSAP officer, will draft a Diversion and

⁴ See Ex. 7, §§ 3(a)-(c) (listing DUI, fishing, and traffic offenses as common diversion-eligible crimes).

contact the defendant to review the agreement. **If approved**, the agreement will be filed.

b. A Defendant is represented by an Attorney, the Attorney, will draft a Diversion and contact the defendant to review the agreement. **If approved**, the agreement will be filed.

4. The defendant must pay the costs, fines, fees and restitution prior to the filing of the Diversion.

5. Diversion agreements will be reviewed regularly to check compliance; if violated, a Motion to Revoke will be filed.

Excerpt from Ex. 7 (Diversion Policy).

10. Other than the crimes specifically prohibited under Subsection (e) above, Respondent has testified that he considers any other crime eligible for diversion. (Ex. 2 at 47:5-11; 50:21-51:6).

11. Respondent has also admitted to granting diversions for crimes including arson, domestic battery, and drug possession. (Ex. 2 at 46:14-17; 62:13-14). Mr. Markle himself does not specifically track the number of felony diversions his office grants—but he does offer felony diversions. (*Id.* 60:10-12; 69:12-74:5). According to court records, Mr. Markle offered 37 felony diversions in 2015 alone.⁵

12. After a review of District Court records, Petitioners have also identified 18 felony diversion agreements Respondent has executed with criminal defendants in recent years, including:

- a) 5 felony theft and burglary offenses (severity levels 7 to 9);⁶
- b) 3 felony aggravated assault and battery offenses (severity level 7);⁷
- c) 3 felony commercial gambling offenses (severity level 8);⁸

⁵ See ANNUAL REPORTS OF THE COURTS OF KANSAS 2015, Criminal Caseload Dispositions By County, at 4, available at <http://web.kscourts.org/stats/15/2015%20Criminal%20Terms.pdf>

⁶ See Exhibit 8, containing criminal complaints and diversion agreements for the following Montgomery County cases: *State v. Garrison*, 2017-CR-348; *State v. VanGurp*, 2015-CR-331; *State v. Dominguez-Ortiz*, 2015-CR-62; *State v. Gouldner*, 2013-CR-594; and *State v. Roberts*, 2012-CR-419.

⁷ See Exhibit 9, containing criminal complaints and diversion agreements for the following Montgomery County cases: *State v. Marshall*, 2018-CR-146; *State v. Bishop*, 2014-CR-336; and *State v. Shaffer*, 2014-CR-473.

⁸ See Exhibit 10, containing criminal complaints and diversion agreements for the following Montgomery County cases: *State v. Hays*, 2013-CR-505; *State v. Westerman*, 2013-CR-506; and *State v. Mann*, 2013-CR-507.

- d) 3 felony fraud/financial offenses (severity levels 7 to 9);⁹
- e) 2 felony property damage offenses (severity levels 9 to 10);¹⁰
- f) 1 felony weapons offense (severity level 9);¹¹
- g) 1 felony drug possession offense (severity level 4).¹²

13. Respondent has also acknowledged that individuals with prior arrest or conviction histories remain eligible to apply for diversion (Ex. 2 at 106:23-107:1; 56:23-57:8), and that there is a “huge difference” between merely being eligible for diversion and being a strong candidate for diversion. (*Id.* at 47:12-16; 47:5-11).

14. Respondent has asserted that Petitioner Wilson is not diversion-eligible because she “was originally charged with a felony” and “had prior involvement with the Independence Police Department.” (Answer ¶ 12; Ex. 2 at 109:4-112:16).

15. But Respondent has provided diversions in cases with felony theft and burglary charges in the past. (Ex. 8 at 3-4, 18, 30). Mr. Markle has also previously granted a diversion on an aggravated assault felony charge notwithstanding that the defendant had previously been convicted of other crimes.¹³

16. Respondent has likewise asserted that Petitioner Koehn is not diversion-eligible exclusively because of his “felony drug possession charge and past criminal history.” (Answer ¶ 13; Ex. 2 at 117:12-21).

⁹ See Exhibit 11, containing criminal complaints and diversion agreements for the following Montgomery County cases: *State v. Hart*, 2017-CR-467; *State v. Cunningham*, 2016-CR-312; and *State v. Lewis*, 2014-CR-483.

¹⁰ See Exhibit 12, containing criminal complaints and diversion agreements for the following Montgomery County cases: *State v. Hurley*, 2017-CR-22; and *State v. Barksdale*, 2016-CR-162.

¹¹ See Exhibit 13, containing the criminal complaint and diversion agreement for the following Montgomery County case: *State v. Dungey*, 2016-CR-65.

¹² See Exhibit 14, containing the criminal complaint and diversion agreement for the following Montgomery County case: *State v. Harrison*, 2015-CR-143.

¹³ Compare Ex. 9 at 15-17, *State v. Shaffer*, 2014-CR-473 (a felony level 7 aggravated assault charge for which the defendant was ultimately given a diversion), with *State v. Shaffer*, 2008-CR-302, attached as Exhibit 15 (a prior conviction against the same defendant for misdemeanor violation of a protective order, which was initially charged as felony level 10 stalking).

17. However, Respondent has admitted to granting diversions for drug crimes in the past. (Ex. 2 62:13-14; 67:5-12). In 2015, Mr. Markle granted a diversion on a serious felony distribution charge, lowering the charges to felony possession prior to offering the defendant a diversion as to that charge. (*Id.* 63:1-25; Ex. 14 at 1,5).

18. Respondent's testimony also confirmed that Mr. Koehn would have been entitled to apply for diversion for the misdemeanor of transporting an open container even if he proceeded to guilty plea on his remaining offenses. (Ex. 2 at 92:9-15; 93:1-4; Answer ¶ 3; *see also* Ex. 2 at 46:14-17).

*Respondent's On-Going Failure to Comply with the Diversion Statute
Impacts Hundreds of Defendants*

19. Montgomery County prosecutes about 950 individual cases per year, or approximately 3% of the county's population (~32,500 residents).¹⁴

20. Respondent concedes that defense attorneys sometimes fail to inform their clients about existing diversion programs for which they may be eligible. (Ex. 2 at 53:14-54:2; 120:18-121:4). Indeed, this has been Petitioner Wilson and Petitioner Koehn's experience with their defense attorneys. (Ex. 6 at 16:21-21; Koehn Depo., attached as Exhibit 16, at 34:8-11; 15:12-22).

21. Respondent does not know whether criminal defendants without an attorney get access to his diversion policy—or even whether the District Court has a copy of his diversion policy to distribute. (Ex. 2 at 35:3-6; 39:12-14).

22. At the same time, Mr. Markle and his assistant prosecutor acknowledge that information learned from the diversion application process often gives them information relevant to

¹⁴ See ANNUAL REPORTS OF THE COURTS OF KANSAS 2018, Criminal Caseload Filing Activity By County, at 4, available at <http://web.kscourts.org/stats/18/2018%20Criminal%20Filings.pdf> (reporting 392 non-traffic felony and misdemeanor cases filed in FY18); Traffic Caseload Filings By County, at 5, available at <http://web.kscourts.org/stats/18/2018%20Traffic%20Caseload.pdf> (reporting 564 traffic-related felony and misdemeanor cases in FY 18).

the ultimate diversion decision. (Ex. 2. at 98:2-6; Montgomery Depo., attached as Exhibit 17, at 27:1-9).

PROCEDURAL HISTORY

23. On June 8, 2018, current Petitioner Karena Wilson and former Petitioner Kansas Crossroads Foundation filed a Petition for Writ of Mandamus and accompanying Memorandum of Points and Authorities in the Kansas Supreme Court against Respondent Larry Markle in his official capacity as County Attorney for Montgomery County, Kansas. (June 8, 2018 Petition for Mandamus, attached as Exhibit 18). The petition alleged that Respondent was violating K.S.A. § 22-2907 *et seq.* (“Diversion Statute”) by failing to: (1) create written diversion policies that fully and accurately describe the diversion program as implemented; (2) provide written notice of the full and accurate program to all criminal defendants; and (3) facilitate diversion conferences with an option for attorney attendance to all defendants actually offered diversion. (*Id.*).

24. The Kansas Supreme Court sought a response from Respondent, which Respondent filed on September 27, 2018 (Markle Response to Supreme Court Mandamus Petition, attached as Exhibit 19). The Supreme Court subsequently ordered the case transferred to this court with a directive to “first examine Petitioners’ standing before proceeding to the merits if warranted.” (Order dated Nov. 20, 2018, attached as Exhibit 20). The Supreme Court’s order cited the following cases with the following verbatim parentheticals: “See *Landrum v. Goering*, 306 Kan. 867, 872, 397 P.3d 1181 (Kan. 2017) (“Generally, a private citizen may seek to compel the performance of a public duty only where he or she can show “an injury or interest specific and peculiar to himself, and not one that he shares with the community in general.” [Citations omitted.]”); *Kansas Bar Ass’n v. Judges of the Third Judicial Dist.*, 270 Kan. 489, 491, 14 P.3d 1154 (2000) (“Whether or not a private

individual has brought himself within the narrow limits of [this] well-established rule must be determined from the particular facts of each individual case.’ [Citation omitted.]”).” (Ex. 20).

25. On March 13, 2019, Respondent consented to an Amended Petition that removed organizational Petitioner Kansas Crossroads Foundation and added individual Petitioner Tristan Koehn, who was then being prosecuted by Respondent.

26. In this court, the parties have conducted discovery limited to the standing question, in accordance with the Supreme Court’s order.

27. This court also determined, upon briefing and argument, that Petitioners would file the opening brief on the standing question. (Journal Entry dated July 11, 2019).

28. Accordingly, with the parties having completed discovery and agreed to a schedule for the standing portion of briefing, Petitioners submit this motion for partial summary judgment on the standing question.

29. For the reasons stated below, Petitioners respectfully request that this court grant this motion and move forward to the merits of Petitioners’ claims.

LEGAL STANDARD

“Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits demonstrate that no material fact is substantially contested and that the moving party is entitled to judgment as a matter of law. When there are no genuine material factual disputes, the issue becomes one of law.” *See, e.g., State of Kansas v. Great Plains of Kiowa Co. Inc.*, 308 Kan. 950, 953, 425 P.3d 290 (Kan. 2018), *citing Heartland Apartment Ass’n v. City of Mission*, 306 Kan. 2, 9, 392 P.3d 98 (Kan. 2017). A petitioner is entitled to summary judgment on standing where they establish standing as a matter of law through undisputed facts. *See U.S. Bank Nat’l Ass’n v. McConnell*, 48 Kan. App. 2d 892, 901, 305 P.3d 1 (Kan. App. 2013) (finding

plaintiff had standing to pursue foreclosure action where “there is no genuine fact issue about the Bank being the holder of the note at the time suit was filed”). Once Petitioners have presented evidence of their standing, the Respondent must introduce sufficient rebuttal evidence to demonstrate that a genuine dispute of material fact exists to defeat summary judgment. *See Armstrong v. Bromley Quarry & Asphalt, Inc.*, 305 Kan. 16, 24, 378 P.3d 1090 (2016) (“When opposing a motion for summary judgment, an adverse party must come forward with evidence to establish a dispute as to a material fact. In order to preclude summary judgment, the facts subject to the dispute must be material to the conclusive issues in the case”).

To the extent the question of standing cannot be resolved on summary judgment—although Petitioners will show below that it can—then the case must proceed to trial on the standing question. *Esquivel v. Watters*, 286 Kan. 292, Syl. ¶ 3, 183 P.3d 847 (2008) (“[s]ummary judgment should not be used to prevent the necessary examination of conflicting testimony and credibility in the crucible of a trial”) (internal quotations omitted). Petitioners are not required to conclusively prevail on the question of standing at the summary judgment stage in the face of a factual dispute. *See Gannon v. State*, 298 Kan. 1107, 1123 (Kan. 2014) (“[Standing] must be proved *in the same way as any other matter* and with the degree of evidence required at the successive stages of the litigation”) (emphasis added); *Steckline Communs., Inc. v. Journal Broad. Grp. of Kan., Inc.*, Case No. 118,456, 2018 Kan. App. Unpub. LEXIS 763, at *3 (Kan. App. Oct. 5, 2018) (remanding for trial to resolve the standing question where a genuine dispute of material fact existed as to petitioner’s standing) (as this is an unpublished case, a copy is attached to this brief in compliance with Kansas Supreme Court Rule 7.04).

ARGUMENT

I. PETITIONERS CAN DEMONSTRATE MANDAMUS STANDING BASED ON THE STATUTORY INJURY THEY SUFFERED OR THE PUBLIC IMPORTANCE OF THE QUESTION AT HAND.

Mandamus petitioners establish standing by showing either: (1) “an injury or interest specific and peculiar to himself, and not one that he shares with the community in general,” *Kansas Bar Ass’n v. Judges of the Third Judicial Dist.*, 270 Kan. 489, 491, 14 P.3d 1154 (2000) (quotation omitted); *Mobil Oil Corp. v. McHenry*, 200 Kan. 211, Syl. ¶ 17, 436 P.2d 982 (Kan. 1968), or (2) “the need to secure a speedy adjudication of questions of law for the guidance of state officers and official boards in the discharge of their duties,” *Ambrosier v. Brownback*, 304 Kan. 907, 910, 375 P.3d 1007 (Kan. 2016) (quoting *Kansas Bar Ass’n v. Judges of the Third Judicial Dist.*, 270 Kan. 489, 498, 14 P.3d 1154 (2000)). Here, Petitioners can establish standing under both frameworks.

A. Petitioners Have Demonstrated an Injury Based on The Denial of Information that the Kansas Diversion Statute Entitled Them To.

Under the first prong above, mandamus standing is “not sufficiently different from the standing requirement in any judicial determination” *Emerson v. Kan. Dep’t of Soc. & Rehab. Servs.*, Case No. 103,486, 2010 Kan. App. Unpub. LEXIS 679, at *5 (Kan. App. Sept. 17, 2010) (as this is an unpublished case, a copy is attached to this brief in compliance with Kansas Supreme Court Rule 7.04). Specifically, courts assess whether petitioners have alleged “a personal stake in the outcome of the controversy as to warrant his invocation of jurisdiction” and “personally suffered some injury.” *Harrison v. Long*, 241 Kan. 174, 176, 734 P.2d 1155 (Kan. 1987) (articulating the general standing test in civil litigation); see *Mobil Oil Corp.*, 200 Kan. at 243 (describing essentially the same test to establish standing in a mandamus action).

A mandamus petitioner suffers an injury where a statute confers a legal entitlement to him as an individual or member of a class of individuals and a public official denies him that entitlement.

See, e.g., Landrum v. Goering, 306 Kan. 867, 872, 397 P.3d 1181 (Kan. 2017) (where statute conferred a specific entitlement on criminal defendants, a Kansas criminal defendant had standing to bring a mandamus action against public officials denying him access to that entitlement).

In particular, the Kansas Supreme Court has found that depriving an individual of information that they are entitled to under law and has a direct interest in accessing constitutes an injury sufficient to confer standing. *See, e.g., Stephens v. Van Arsdale*, 227 Kan. 676, 683, 608 P.2d 972 (Kan. 1980). In *Stephens*, the Wichita Eagle had standing to bring a mandamus action to compel the Sedgwick County clerk to release court files from criminal proceedings. *Id.* The Court found that the newspaper had suffered an injury because the denial of access to information in the court records “impair[ed] their ability to carry on their business, the collection and dissemination of information.” *Id.* In short, the Court held an informational injury was sufficient to confer standing. The petitioner was not required to show that the requested records would be used for some further interest or to abate a future injury.¹⁵

Ms. Wilson and Mr. Kohen can demonstrate a similar informational injury to the petitioners in *Stephens*. They were both entitled by statute to receive notice of Respondent’s diversion program. Specifically, the diversion statute requires that “*Each defendant* shall be informed in writing of the diversion program and the policies and guidelines adopted by the district attorney.” K.S.A. § 22-2907. The statute and particularly the notice provision are clearly designed to protect and inform

¹⁵ Courts have found that a variety of grievances and deprivations can constitute an injury to confer standing—including being denied access to information that may serve no further interest other than informing the petitioner. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373–74 (1982) (holding that the denial of information subject to disclosure under the Fair Housing Act constitutes an injury in fact); *Pub. Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 449 (1989) (finding DOJ’s refusal to permit plaintiffs to scrutinize the ABA Committee’s minutes and records constituted a sufficiently distinct injury to provide standing to sue, invoking the court’s FOIA jurisprudence and noting “Our decisions interpreting the Freedom of Information Act have never suggested that those requesting information under it need show more than that they sought and were denied specific agency records. There is no reason for a different rule here.”); *Fed. Election Comm’n v. Akins*, 524 U.S. 11, 23 (1998) (holding voters had standing to sue based on informational injury caused by the Federal Election Commission’s refusal to demand and disclose information about political committees as required by the Federal Election Campaign Act); *Spokeo v. Robins*, 136 S. Ct. 1540, 1549 (2016) (“‘inability to obtain information’ that Congress ha[s] decided to make public is a sufficient injury in fact to satisfy Article III.”).

criminal defendants like Ms. Wilson and Mr. Koehn. *See* Kansas House Judiciary Committee Report on HB 3130 at 48 (“the Committee has examined a pretrial diversion approach and believes that such should be available in Kansas to reduce the numbers of persons committed to institutions); *see also* XXI Kan. Op. Att’y Gen. 32 (1997) (“the purpose of the notification requirement is to safeguard a defendant from discrimination by the prosecutor.”); *compare Landrum*, 306 Kan. at 870 (fact that criminal defendant “may have to proceed to trial without the” relevant statutory entitlement augured in favor of standing). There is also no dispute that Respondent did not provide Ms. Wilson and Mr. Koehn with the information to which they are entitled under K.S.A. 22-2907. (Ex. 2 at 27:25-28:23; Ex. 3, Admission Nos. 1 & 2).

Because Petitioners are both criminal defendants whom Markle failed to notify about his diversion program, they have clearly been deprived of a legal entitlement and suffered a recognized legal injury as a result.

B. Ms. Wilson and Mr. Koehn Have Been Individually Injured.

An injury can be peculiar and specific to a petitioner even if their grievance is shared with a class of similarly situated individuals. *Emerson v. Kan. Dep’t of Soc. & Rehab. Servs.*, 2010 Kan. App. Unpub. LEXIS 679 at *5 (explaining that “the mere fact that other persons institutionalized such as Emerson may be subject to similar demands does not remove the fact that Emerson has a specific injury arising from SRS’s demand for payment against him”). A criminal defendant petitioning to compel a public official to provide them with a statutory protection or entitlement has a specific injury distinct from other citizens, even if the statute they are seeking to enforce applies to all criminal defendants. *Landrum*, 306 Kan. at 872.

In other words, Petitioners do not share their injury with the community in general. The diversion statute does not require Respondent to provide notice to all residents of the county. Nor is

the provision designed to protect classes of individuals other than criminal defendants. Ms. Wilson and Mr. Kohen have a specific interest distinct from other citizens at large in compelling Respondent to comply with K.S.A. 22-2907, and therefore they have standing.

C. Petitioners Have Standing Based on the Public Importance of the Question at Hand.

Kansas courts have “broadened the availability of mandamus in order to expeditiously resolve the issues.” *Stephens*, 227 Kan. at 682. Specifically, the Kansas Supreme Court has held, “[t]urning to standing, this court has allowed original actions in mandamus when the petitioner demonstrates a need ‘to secure a speedy adjudication of questions of law for the guidance of state officers and official boards in the discharge of their duties.’” *Ambrosier*, 304 Kan. at 910 (*quoting Kansas Bar Ass’n*, 270 Kan. at 498). Petitioners are seeking exactly that: speedy adjudication of a question of statutory construction to guide district and county attorneys in the discharge of their duties under the Kansas Diversion Statute.

The importance of the questions at hand cannot be overstated. Respondent prosecutes approximately 950 criminal cases each year,¹⁶ many of which are cases for which diversion is a viable option. In the absence of notice from the County Attorney of the full and accurate scope of the county’s diversion program—as the law and this petition demand—many criminal defendants will receive insufficient information or, like Petitioners, none at all about the opportunity to apply for diversion. This hinders defendants’ ability to actually receive diversion, which the Legislature has promoted as beneficial Kansas public policy. *See* Kansas House Judiciary Committee Report on HB 3130 at 48 (“[T]he Committee has examined a pretrial diversion approach and believes that such should be available in Kansas to reduce the numbers of persons committed to institutions”). Indeed, Mr. Markle himself testified that defense attorneys regularly fail to inform their clients about existing

¹⁶ *See supra* note 14.

diversion programs they may be eligible for. (Ex. 2 at 53:14-54:2; 120:18-121:4). This of course has been Petitioner Wilson and Petitioner Koehn's experience with their defense attorneys. (Ex. 6 at 16:21-21; Koehn Depo., attached as Exhibit 16, at 34:8-11; 15:12-22).

The lack of notice is particularly concerning for pro se litigants, as Mr. Markle has indicated that he does not know whether criminal defendants without an attorney get access to his diversion policy—or even whether the District Court has a copy of his diversion policy to distribute. (Ex. 2 at 35:3-6; 39:12-14). Yet, both Mr. Markle and his assistant prosecutor acknowledge that information learned from the diversion application process often gives them mitigating information that changes their mind in favor of offering individuals diversion. (Ex. 2 at 98:2-6; Ex. 17 at 27:1-9).

Accordingly, the County Attorney's failure to provide statutory notice of the true nature of his diversion program will continue to negatively impact myriad criminal defendants who might have received a diversion or other more beneficial outcomes if they had only known they could apply and make their case to the County Attorney.¹⁷

II. PETITIONERS CAN EASILY ESTABLISH STANDING EVEN UNDER RESPONDENT'S MISGUIDED THEORY OF THE CASE.

Respondent has maintained that Petitioners lack standing to bring this mandamus action solely because Petitioners are not eligible for diversion. *See* Answer ¶¶ 12-13.¹⁸ But diversion

¹⁷ In further support of the public's interest in resolving this question, Respondent has implied via deposition questioning that Petitioners have not been harmed because they: (1) could not have afforded the \$300 application fee, and/or (2) could have their records expunged post-conviction. Ex. 6 at 29:19-21 (expungement); *id.* 46:3-12 (fee); Ex. 16 at 36:2-37:2 (both). These arguments dangerously miss the point. First, ability to pay and availability of expungement are irrelevant to whether Petitioners are entitled to information about the diversion program under K.S.A. 22-2907 *et seq.* Second, the fact that Respondent raised the fee in his questioning makes it even more important to clarify the informational entitlement for disadvantaged Montgomery County residents, who, it seems, could be missing out on the information simply because the County Attorney has unilaterally decided they are too poor. If Respondent is indeed depriving Montgomery County residents—or did indeed deprive these Petitioners—of the opportunity to participate in diversion based on their inability to pay, the question of Respondent's notice obligations raises an issue of constitutional importance. *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

¹⁸ Respondent has also suggested at times that even diversion-eligible defendants would have no injury for standing purposes because diversion is similar enough to probation as an alternative to incarceration. Ex. 19 at 6. These are, of course, fundamentally different statutory programs and—crucially—diversion is granted prior to the defendant ever

eligibility is entirely irrelevant to the standing analysis. As described above, each and every criminal defendant in Montgomery County has a statutory right to notice of diversion that exists independent of whether or not they are actually diversion-eligible.¹⁹ The statute establishes that Petitioners, and indeed all criminal defendants, have standing to sue as a matter of law.²⁰ But regardless, Petitioners have plainly demonstrated that they are eligible for diversion under Respondent’s current program. They have therefore conclusively established their standing even under Respondent’s misguided framing of the standing issue.

A. Diversion Eligibility Under Respondent’s Existing Policy is Widely Permissive.

Montgomery County’s Diversion Policy declares a “broad swath” of crimes eligible for diversion. (Ex. 2 at 47:17-21). Although the policy identifies three common diversion-eligible offenses by name,²¹ it does not contain a comprehensive list of every diversion-eligible offense. (Ex. 3, Admission No. 3). Instead, the policy specifically identifies the crimes that are *not* eligible for diversion and all other offenses are diversion-eligible by default. The diversion policy states, in relevant part, as follows:

(d) Other Crimes: Factors to consider. In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the county attorney shall consider at least the following factors among all factors considered:

1. The nature of the crime charged and the circumstances surrounding it;
2. Any special characteristics or circumstances of the defendant; [...]
6. The impact of the diversion of the defendant upon the community;
7. Recommendations, if any, of the involved law enforcement agency;
8. Recommendations, if any, of the victim;

being convicted of a criminal offense. *See* K.S.A. § 22-2910; *cf.* K.S.A. § 21-6604(a)(3) (listing probation as one of the appropriate sentencing options *after* conviction). Probation is therefore not at all legally equivalent to diversion and failure to receive notice of diversion is more than ample injury to assert standing. *See, e.g., Am. Humanist Ass’n v. Douglas Cty. Sch. Dist. Re-1*, 859 F.3d 1243, 1252 (10th Cir. 2017) (noting that even the mere fact of injury, regardless of magnitude, establishes standing). More importantly, the comparison is legally irrelevant to these proceedings, which are about Petitioners’ standing under the Diversion Statute and only that statute.

¹⁹ K.S.A. 22-2907(3) (“*Each defendant* shall be informed in writing of the diversion program and the policies and guidelines adopted by the district attorney”) (emphasis added); KAN. ATT’Y GEN. OP. No. 97-70 (“the purpose of the notification requirement is to safeguard a defendant from discrimination by a prosecutor” who may not otherwise provide notice to all defendants).

²⁰ *See supra* Brief Section I(A) & note 15.

²¹ *See* Diversion Policy §§ 3(a)-(c) (listing DUI, fishing, and traffic offenses as common diversion-eligible crimes).

9. Provisions for restitution; and
10. Any mitigating circumstances.

(e) A Defendant shall not be eligible for Diversion if:

1. The complaint alleges a violation of K.S.A. 8-1567 and amendments thereto and the defendant [...]
2. The complaint alleges that the defendant committed a class A or B felony or for crimes committed on or after July 1, 1993, an off-grid crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity level 1 or 2 felony for drug crimes. [...].

Ex. 7 (Diversion Policy).

The practical effect of the excerpted text is that *all crimes* are eligible for diversion under Subsection (d), so long as they are not in the list of explicitly excluded crimes in Subsection (e)—which essentially prohibits diversions for the major felony offenses from severity levels one to three.²² The Policy therefore establishes that any felony offense with a severity level of four or lower is eligible for diversion.

Respondent agrees with this plain reading. He testified that other than those crimes specifically prohibited under Subsection (e), *any other crime* is eligible for diversion. (Ex. 2 at 47:5-11; 50:21-51:6). Respondent has also admitted to granting diversions for crimes as varied as arson, domestic battery, and drug possession. (*Id.* at 46:14-17; 62:13-14). Mr. Markle does not specifically track the number of felony diversions his office grants—but he does offer felony diversions. (*Id.* 60:10-12; 69:12-74:5). Kansas Courts Annual Report aggregated data reveals that in 2015 alone, Mr. Markle granted 37 felony diversions.²³ After a review of District Court records, Petitioners have also identified at least 18 specific felony diversion agreements Respondent has executed with criminal defendants in recent years, including:

²² The exclusion of these particular crimes from the diversion policy is mandated by state law. *See* K.S.A. § 22-2908(b)(2).

²³ *See* Criminal Caseload By County, at 4, *supra* note 5.

- 5 felony theft and burglary offenses (severity levels 7 to 9);²⁴
- 3 felony aggravated assault and battery offenses (severity level 7);²⁵
- 3 felony commercial gambling offenses (severity level 8);²⁶
- 3 felony fraud/financial offenses (severity levels 7 to 9);²⁷
- 2 felony property damage offenses (severity levels 9 to 10);²⁸
- 1 felony weapons offense (severity level 9);²⁹
- 1 felony drug possession offense (severity level 4).³⁰

It is therefore clear that criminal defendants charged with non-statutorily-excluded felony offenses in Montgomery County are not only eligible for diversion but have also actually been granted diversions by Respondent under his current diversion program. Mr. Markle has also acknowledged that individuals with prior arrest or conviction histories remain eligible to apply for diversion. (Ex. 2 at 106:23-107:1; 56:23-57:8). Indeed, Respondent's Diversion Policy indicates that prior criminal history is just one of the factors that can be considered in deciding whether to ultimately grant an eligible defendant diversion—but criminal history does not automatically render the defendant diversion-ineligible. (*See* Ex. 7, Subsection 3(d)(3)). Mr. Markle has even granted diversions for violent felony offenses in the past despite the existence of a prior conviction on the defendant's record.³¹

Finally, Mr. Markle has clarified that it is possible to apply for and receive a diversion on certain charges in the criminal complaint while proceeding to conviction on other charges (Ex. 2 at 92:9-15; 93:1-4), though the Diversion Policy does not include this fact. This practice greatly expands

²⁴ *See* Ex. 8.

²⁵ *See* Ex. 9.

²⁶ *See* Ex. 10.

²⁷ *See* Ex. 11.

²⁸ *See* Ex. 12.

²⁹ *See* Ex. 13.

³⁰ *See* Ex. 14.

³¹ *Compare* Ex. 9 at 15-17, *State v. Shaffer*, 2014-CR-473 (a felony level 7 aggravated assault charge for which the defendant was ultimately given a diversion), *with State v. Shaffer*, 2008-CR-302, Ex. 15 at 1-3 (a prior conviction against the same defendant for misdemeanor violation of a protective order, which was initially charged as felony level 10 stalking).

diversion-eligibility for criminal defendants who have multiple charges filed against them. It is likewise possible, however, that Mr. Markle will grant diversions on all charges filed—even for multiple felonies at once.³² Montgomery County’s Diversion Policy and Respondent’s own diversion practices therefore identify that criminal defendants with felony charges and prior arrests or convictions are still eligible to apply for diversion.

This is not to say that all criminal defendants with felony charges will in fact receive a diversion. Mr. Markle has himself noted there is a “huge difference” between merely being eligible for diversion and being a strong candidate for diversion. (Ex. 2 at 47:12-16; 47:5-11). Eligibility, of course, is the right to be considered for diversion in the first place, whereas being a good candidate addresses the likelihood someone will actually obtain a diversion based on the circumstances of their case. The eligibility question then is not whether Respondent would actually offer a particular defendant diversion, but whether the defendant has met the baseline criteria to apply for diversion under Respondent’s current policy.³³

B. Petitioner Karena Wilson was Clearly Eligible for Diversion under Respondent’s Existing Policy.

Respondent has argued that Ms. Wilson was not eligible for diversion on her felony level 9 theft charge from 2017 because she: (1) “was originally charged with a felony”; and (2) “had prior involvement with the Independence Police Department,” including some involvement with cases relating to controlled substances. (Answer ¶ 12; *see* Ex. 2 at 109:4-112:16). Respondent’s claim that Ms. Wilson’s felony theft charge renders her diversion ineligible is particularly galling in light of the fact that Mr. Markle has granted several felony diversions in cases with theft charges identical to Ms.

³² *See* Ex. 10 at 1-2, 4, *State. v. Hays*, 2013-CR-505 (granting a diversion for both felony level 8 commercial gambling and felony level 9 interference with a law enforcement officer).

³³ Eligibility-assessment, unlike evaluation of a defendant’s actual candidacy, does not even require the mitigating historical, demographic, and factual information collected as part of Respondent’s application and decision-making process for diversions. (*See* Ex. 2 at 95:18-21).

Wilson’s case, as well as diversions in even more serious burglary offenses. (Ex. 8 at 3-4, 18, 30). Petitioner Wilson’s felony theft charge cannot, therefore, make her diversion ineligible when other criminal defendants with the same exact felony charges were found not only eligible but also suitable to receive a diversion. Mr. Markle has also admitted under oath that he does grant felony diversions. (Ex. 2. at 46:14-17; 60:10-64:5).³⁴

Furthermore, nothing in Montgomery County’s Diversion Policy declares that prior law enforcement contacts— let alone prior convictions—bar someone from diversion eligibility. The Policy in fact suggests the opposite, by stating that prior criminal history is just one factor to evaluate in deciding whether or not an eligible defendant should actually receive a diversion. (*See* Ex. 7, Subsection 3(d)(3)). Here, Respondent apparently takes issue with Ms. Wilson’s “prior involvement” with law enforcement short of her actually having been convicted for any prior offenses. (Answer ¶ 12). But as previously noted, Respondent granted a diversion on a much more serious aggravated assault felony charge even where the defendant had previously been convicted of other crimes. (*Compare* Ex. 9 at 15-17, *with* Ex. 15 at 1-3). Ms. Wilson’s mere “involvement” with law enforcement logically cannot render her ineligible to receive a diversion when someone with more serious charges and an established conviction history was found to be diversion-eligible. This argument also directly contravenes Mr. Markle’s sworn testimony that prior arrests and convictions do not impact diversion eligibility. (Ex. 2 at 56:23-57:8; 106:23-107:1).

Mr. Markle may maintain that he would never have granted Ms. Wilson a diversion (*id.* at 113:7-9), but, again, eligibility is separate from viability. According to Respondent’s own Policy and testimony, Ms. Wilson was eligible to apply for diversion regardless of whether Mr. Markle

³⁴ Mr. Markle has also expressly acknowledged the specific factors he weighs when considering an eligible felony offense for diversion, including: age (Ex. 2 at 85:8-10), mental health status (*id.* at 66:9-11); being a confidential informant (*id.* at 66:19-25); victim input (*id.* at 70:19-22); and fundamental weaknesses in the State’s proof against the defendant (*id.* at 64:1-8; 72:11-19).

considered her to be a good candidate for the program. She has therefore asserted standing even under Respondent's contorted interpretation of the standing inquiry.

C. Petitioner Tristan Koehn was Likewise Eligible for Diversion under Respondent's Existing Policy.

Respondent has also proclaimed that Petitioner Koehn was not diversion-eligible exclusively because of his "felony drug possession charge and past criminal history." (Answer ¶ 13). As noted above, prior arrests, law enforcement contacts, and even prior convictions are not a barrier to diversion eligibility either under policy or by practice in Montgomery County (*see* Ex. 2 at 56:23-57:8; 106:23-107:1; *see also* Ex. 7, Subsection 3(d)(3))—where even individuals with felony charges have received a diversion despite prior convictions. (*Compare* Ex. 9 at 15-17, *with* Ex. 15 at 1-3).

With respect to Mr. Koehn's felony drug charge, Mr. Markle has admitted to granting diversions for drug crimes in the past. (Ex. 2 at 62:13-14; 67:5-12). In 2015, Mr. Markle granted a diversion on a serious felony distribution charge, lowering the charges to felony possession prior to offering the defendant a diversion as to that charge. (*Id.* 63:1-25; Ex. 14 at 1,5). If another criminal defendant was able to receive a diversion for their felony drug possession crime, then it is necessarily true that Petitioner Koehn's felony drug possession charge was also eligible to be considered for diversion.

Regardless, however, Petitioner Koehn was simultaneously charged with a variety of lower-level misdemeanor offenses that Respondent has not argued are diversion-ineligible. In fact, Respondent admits that Mr. Koehn was charged with "a misdemeanor for transporting an open container" (Answer ¶ 3), an offense for which Mr. Markle clearly offers diversion. (*See* Ex. 2 at 46:14-17). Mr. Koehn was entitled to apply for diversion for this particular offense even if he had proceeded to plead guilty on his remaining charges. (*Id.* at 92:9-15; 93:1-4).

Petitioner Koehn has therefore successfully demonstrated that he was eligible for diversion on at least some if not all of his criminal charges, and therefore he has amply demonstrated his standing even under Respondent's incorrect standing theory.

III. PETITIONERS' CLAIMS ARE NOT MOOT AND, EVEN IF THEY WERE, THE HARMS ARE CAPABLE OF REPETITION AND RAISE CONCERNS OF PUBLIC IMPORTANCE MANDATING REVIEW.

Respondent has asserted that Petitioner Wilson's claims are moot because she accepted a plea offer ending her criminal case and is therefore no longer entitled to notice of diversion. Ex. 19 at 8. But Petitioner Wilson has plainly suffered a conviction and other ongoing harms resulting from Respondent's refusal to provide her notice of diversion. Because she was unaware of Mr. Markle's diversion program, Ms. Wilson accepted a conviction for her very first felony theft charge, for which she was unquestionably diversion-eligible. (*See* Brief Section II(b) above). Under the analysis above comparing her case to others for which diversion was offered, she should have even been a strong candidate. Unfortunately, she never knew to apply, and this was Respondent's legal fault.

Had she known to apply for diversion, she could have made her case at that point and possibly avoided a theft conviction altogether, as other defendants with the same charges have done in the past by convincing Respondent that they should receive a diversion. (Ex. 2 at 97:12-98:5). She also could have provided mitigating information that may have positively impacted her plea stance. Instead, Ms. Wilson's theft conviction actively prevented her from obtaining a job in the crucial months at the start of her community supervision. (Ex. 6 at 57:3-8). Inability to obtain work, in turn, was the first probation violation Ms. Wilson received during her period of probation. (*Id.* at 47:24). Respondent's failure to provide Ms. Wilson notice of diversion therefore led to a cascading set of harms specific to Ms. Wilson's position as a criminal defendant entitled to statutory notice of diversion. These are precisely the kind of personal and specific injuries that support standing in a

mandamus action, notwithstanding the fact that Petitioner Wilson does not have an ongoing criminal proceeding.

Petitioner Koehn, meanwhile, pursued this case as a criminal defendant with pending charges for five months and still did not receive notice of diversion from the County Attorney as required by the statute. (Ex. 3, Admission No. 1; Ex. 2 at 27:25-28:23). His claims are therefore clearly live by virtue of the fact that he was a criminal defendant entitled to notice at the time he joined this lawsuit. Additionally, like Ms. Wilson, Mr. Koehn now also suffers the burden of criminal convictions for charges that were plainly diversion-eligible. (*See* Brief Section II(c) above).

Even if the Court would normally consider Petitioners' claims moot, the harms at issue in this case are clearly capable of repetition and are likely to evade review because of the brief lifecycle of a criminal case in Montgomery County. Accordingly, the case should still move forward. Petitioner Koehn's example is instructive. Should a subsequent criminal defendant wish to challenge Respondent's refusal to provide them notice of diversion, their criminal case may also conclude prior to reaching an adjudication on the merits of their mandamus action as well.³⁵ These circumstances trigger a clear exception to the mootness doctrine. *See General Bldg. Contrs., L.L.C. v. Bd. of Shawnee County Comm'rs*, 275 Kan. 525, 533, 66 P.3d 873 (Kan. 2003) ("The parties and the court agreed the situation would recur and continue to evade appellate review. We properly refused to dismiss the appeal as moot").

Mootness is likewise irrelevant where the case involves a matter of public interest. *Allenbrand v. Contractor*, 253 Kan. 315, Syl. ¶ 3, 855 P.2d 926 (1993) ("An exception to the general rule

³⁵ Evasion of judicial review in this scenario is not only possible but almost certain. Of all cases prosecuted to conviction in Montgomery County in 2018, 96% of felony cases resolved by guilty plea (253/264 cases) as did 90% of misdemeanor cases (70/78). *See* ANNUAL REPORTS OF THE COURTS OF KANSAS 2018, Criminal Caseload Dispositions By County, at 4, available at <http://web.kscourts.org/stats/18/2018%20Criminal%20Terms.pdf>. Indeed, it appears there were only 5 full-length criminal trials in Montgomery County in the entirety of 2018. *Id.* Under these circumstances, the criminal plea-bargaining process will almost certainly be faster than civil litigation.

regarding whether a case is moot exists if the case involves a question of public interest”). This is certainly true here, where hundreds of criminal defendants are not receiving crucial notice of diversion—potentially from any source— that might assist them in avoiding a conviction and its collateral consequences. (*See* Brief Subsection I(C) above). This system-wide public impact presents a situation where mootness cannot and should not result in dismissal of the claim. *See State v. Hilton*, 295 Kan. 845, 851, 286 P.3d 871 (Kan. 2012) (retaining jurisdiction of a case even where plaintiff had no standing because ensuring that district courts structure probation in accordance with the law is a matter of public importance and presents a harm capable of repetition). This Court should therefore issue a decision on the merits in this case notwithstanding any argument that Petitioners’ claims have or will become moot.

CONCLUSION

For the reasons stated above, this Court should grant Petitioners’ motion for partial summary judgment and find that they have standing to proceed to the merits of their claims.

Dated: November 4, 2019

Respectfully submitted,

/s/ Zal K. Shroff
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LAUREN BONDS, KS #27807
ACLU FOUNDATION OF KANSAS
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/s/ Somil Trivedi
Somil Trivedi*
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strivedi@aclu.org
*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I HEREBY certify that on this 4th day of November, 2019, the foregoing was filed with the Clerk of the Court using the Kansas Courts eFiling system which will send notice of electronic filing to all counsel of record.

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ATTORNEYS FOR RESPONDENT

/s/ Zal K. Shroff
Zal K. Shroff

Exhibit 1

Lisa D Montgomery, #18243
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Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lisamontgomery052013@gmail.com

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Tristan Michael Koehn,

1114 N 9th St
Independence, Ks 67301

Defendant.

AGENCY: Independence Police Department #18-2376

INFORMATION

COMES NOW the State of Kansas, by and through Lisa D Montgomery, duly qualified and acting Montgomery County, Assistant County Attorney, for and on behalf of the State of Kansas alleges and states for its *Information* against the defendant, **Tristan Michael Koehn:**

COUNT I
Transporting an Open Container

That on or about the 27th day of December, 2018, in Montgomery County, Kansas, Tristan Michael Koehn, did unlawfully transport in a vehicle upon a highway or street an alcoholic beverage in an open container and such container was not in the locked trunk or rear compartment or any locked outside compartment which is not accessible to any person in the vehicle while the vehicle is in motion, or if the vehicle is not equipped with a trunk, behind the last upright seat or in an area not normally occupied by the driver or a passenger, and such vehicle is not a recreational vehicle, all in violation of K.S.A. 8-1599. Transportation of Liquor in an Open Container, an unclassified misdemeanor. (Penalty: Up to six months in the county jail and a fine of up to \$200. Upon a second or subsequent conviction, the court shall also suspend or restrict the person's driver's license or privilege to operate a motor vehicle on the streets or highways of this State. K.S.A. 8-1599.)

COUNT II

Use/possess w/intent to use drug paraphernalia into human body

That on or about the 27th day of December, 2018, in Montgomery County, Kansas, Tristan Michael Koehn, did unlawfully use, possess, or have under the defendant's control with intent to use, drug paraphernalia, used to store, contain, conceal, ingest, inhale, injecting or otherwise introduce a controlled substance into the human body, all in violation of K.S.A. 21-5709(b)(2). Possession of Drug Paraphernalia, a Class B nonperson misdemeanor. (Maximum penalty: Six Months in county jail and a fine of up to \$1,000. K.S.A. 21-6602 and K.S.A. 21-6611.)

COUNT III

Possession of opiate, opium, narcotic or certain stimulant

That on or about the 27th day of December, 2018, in Montgomery County, Kansas, Tristan Michael Koehn did unlawfully and feloniously possess a controlled substance, to-wit: Methamphetamine, a Schedule II controlled substance as designated in K.S.A. 65-4107(d)(3), and amendments thereto, all in violation of K.S.A. 21-5706(a). Unlawful Possession of a Controlled Substance, a drug severity level 5 felony. (Penalty: From a minimum of 10 months to a maximum of 42 months in prison and a fine of up to \$100,000; Postrelease supervision term of 12 months. K.S.A. 21-6805, K.S.A. 21-6611, K.S.A. 22-3717, and amendments thereto.)

COUNT IV

Vehicles; Unlawful Acts; e.g., registration

That on or about the 27th day of December, 2018, in Montgomery County, Kansas, Tristan Michael Koehn, then and there being present did unlawfully operate a motor vehicle on a street or highway which is not registered, or for which a certificate of title has not been issued or which does not have attached thereto and displayed thereon the license plate assigned thereto by the Division of Motor Vehicles for the current registration year, including any registration decal required to be affixed to any such license plate pursuant to K.S.A. 8-1340, in violation of K.S.A. 8-142, Registration Violation, an unclassified misdemeanor. (Penalty: K.S.A. 2011 Supp. 21-6602 & 21-6611)

COUNT V

Vehicles; Liability insurance coverage required

That on or about the 27th day of December, 2018, in Montgomery County, Kansas, Tristan Michael Koehn, having been lawfully requested to provide proof of motor vehicle liability insurance, did unlawfully fail to provide proof of motor vehicle liability insurance coverage in accordance with the provisions of the Automobile Injury Reparations Act, all in violation of K.S.A. 40-3104. No Proof of Liability Insurance, a Class B nonperson misdemeanor. (Penalty: Up to six months in the county jail and a fine of at least \$300 and up to \$1000. K.S.A. 40-3104, K.S.A. 21-6602 and K.S.A. 21-6611.)

COUNT VI

Driving While Suspended - Second or Subsequent Offense

That on or about the 27th day of December, 2018, in Montgomery County, Kansas, Tristan Michael Koehn did unlawfully operate a motor vehicle on a highway of this state at a time when

the defendant's privilege to do so was canceled, suspended or revoked, and has previously been convicted of driving while suspended, all in violation of K.S.A. 8-262. Driving while License Canceled, Suspended or Revoked, a class A nonperson misdemeanor. (Penalty: A minimum of five days and up to one year in the county jail (not eligible for parole until after five days jail) and a fine of at least \$100 and up to \$2500. K.S.A. 8-262(a)(3), K.S.A. 21-6602, and K.S.A. 21-6611.)

All of the said acts then and there committed being contrary to the statutes in such cases made and provided and being against the peace and dignity of the State of Kansas.

WITNESSES:

Damon Athey
Timothy Townley
KBI Lab
Cynthia A Koehn

/s/ Lisa D Montgomery
Lisa D Montgomery, #18243
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lisamontgomery052013@gmail.com

VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF MONTGOMERY)

Lisa D Montgomery, duly qualified and acting Assistant County Attorney, authorized and empowered to prosecute for and on behalf of the State of Kansas, Montgomery County, of lawful age, being first duly sworn on oath deposes and states that the matters and things set forth and contained in the above and foregoing *Information* are true and correct as informed and to the best of my knowledge and belief, so help me God.

/s/ Lisa D Montgomery
Lisa D Montgomery, #18243
Assistant County Attorney

Subscribed and sworn to before me on 12/27/2018.

/s/ Kendall Garton
Notary Public
My term expires: 5/15/2022

**IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS
SITTING AT INDEPENDENCE, KANSAS**

STATE OF KANSAS

Plaintiff

vs.

Case No.

18 C R 559 I

Tristan Michael Koehn

Defendant

☒ Male ☐ Female

JOURNAL ENTRY OF JUDGMENT

Misdemeanor/Traffic

Transaction No.: 306321800057 K.B.I. Number: KS33706595

Sentencing Date: August 13, 2019

Defense Counsel: ☐ Appointed ☒ Retained ☐ Self ☐ Waived Orally ☐ Waived in Writing

Counsel Name: Edward Battitori

Type of Proceeding: ☐ Bench Trial ☐ Jury Trial ☐ Guilty Plea ☒ Nolo Contendre Plea

Date of Conviction: August 13, 2019

CURRENT CONVICTION INFORMATION

<u>Count:</u>	<u>Offense:</u>	<u>Misdemeanor, Class</u>
I.	Transport Open Container, K.S.A. 08-1599	Unclass.
IV.	Vehicle: Registration, K.S.A. 08-1340	Unclass.
V.	Vehicle: Liability Insurance, K.S.A. 40-3104	B N/P
VI.	Driving While Suspended, K.S.A. 08-0262	A N/P
VII.	Flee/Att. To Elude LEO, K.S.A. 08-1568(a)(c)(1)	B N/P

SENTENCE IMPOSED:

<u>Count:</u>	<u>County Jail:</u>	<u>Fine:</u>	<u>C.S.O. Probation Term</u>
I.	6 months		12 months
IV.	30 days		12 months
V.	6 months	\$300.00	12 months
VI.	6 months		12 months
VII.	6 months		12 months

County Jail Time: ☐ consecutive ☒ concurrent to each above count

County Jail Time: imposed as a condition of Probation: ____ days

Comments:

COSTS ORDERED:

Court Costs: \$158.00	Total Fines: \$300.00	Probation Fee: \$60.00
Witness Fee: \$	KBI Fee: \$	Other Lab Fee: \$
Fingerprint Fee: \$45.00	Medical Costs/Expense Reimbursement: \$	
Court Appointed Attorney Fee: \$	Extradition Costs: \$	
Other: \$		

RESTITUTION:

Amount: **Name and Address:**

\$ _____

JAIL CREDIT:

<u>Location</u>	<u>From</u>	<u>To</u>	<u>Days</u>
MGDOC	12/27/18	12/30/18	3
	___/___/___	___/___/___	___
	___/___/___	___/___/___	___

MISCELLANEOUS PROVISIONS:

- X Defendant informed of right to appeal within 14 days of this date.
- X Defendant informed of potential right to expungement und K.S.A. 21-4619.
- X Defendant has been processed, fingerprinted and palmpriated. K.S.A. 21-2501(b).
- ___ Court remands Defendant to custody of Sheriff to begin serving sentence.
- ___ Defendant to report to County Jail on the ___ day of _____, 20___ at _____ O'clock
___ m. to start serving sentence.
- ___ House arrest is authorized for remaining
Work release recommended (if accepted, defendant is to abide by recommendations of the
program)
- ___ Defendant's financial resources and burden imposed by BIDS application and attorney fees
considered by the court pursuant to K.S.A. 22-4513 and State v. Robinson, 281 Kan. 538
(2006).
- ___ Includes fine for DUI offense committed on or after 7/1/11. Clerk will send \$250.00 to State
Treasurer.
- ___ Designated by court as DV conviction.
- ___ Defendant to undergo a domestic violence offender assessment conducted by a certified
Batterer intervention program and follow all recommendations.

Other Comments:

**THIS ORDER EFFECTIVE UPON THE DATE
OF ELECTRONIC SIGNATURE BY THE COURT**
JUDGE

PROSECUTING ATTORNEY

/s/ Lisa Montgomery
Lisa D. Montgomery, #18243
Judicial Center
300 E. Main
Independence, Kansas 67301
620) 330-1020
Date: September /23 /2019

DEFENSE ATTORNEY

/s/ Edward Battitori
Edward Battitori, #14620
612 S. Cypress
Cherokee, KS 66724
620-4578008
Date: _____ / _____ /2019

Exhibit 2

Withheld from Public View
by Order of the Montgomery
County District Court
– July 11, 2019

Exhibit 3

IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS

KARENA WILSON and TRISTAN KOEHN,

Petitioners,

vs.

LARRY MARKLE, in his official capacity as
County Attorney of Montgomery County,

Respondent.

Case No. 2018-CV-000147

**RESPONDENT'S SUPPLEMENTAL OBJECTIONS AND RESPONSES TO
PETITIONERS' FIRST SET OF REQUESTS FOR ADMISSIONS**

COMES NOW Respondent Larry Markle, by and through undersigned counsel, and for his objections and responses to Petitioners' First Set of Request for Admissions states as follows:

Request for Admission No. 1

As of the date of this request, the MCAO had never notified Petitioner Tristan Koehn in writing of the MCAO's diversion program, policies, or guidelines.

RESPONSE: Respondent admits that no one in the MCAO personally discussed diversion with Petitioner Tristan Koehn as he is represented by counsel. Respondent lacks knowledge or information regarding confidential communications between Petitioner and his experienced defense counsel who is familiar with the Montgomery County diversion programs.

Request for Admission No. 2:

As of the date of this request, the MCAO had never notified Petitioner Karena Wilson in writing of the MCAO's diversion program, policies, or guidelines.

RESPONSE: Respondent admits that no one in the MCAO personally discussed diversion with Petitioner Karena Wilson as she was represented by counsel. Respondent lacks knowledge or information regarding confidential communications between Petitioner and her experienced defense counsel who was familiar with the Montgomery County diversion programs.



Request for Admission No. 3:

The MCAO's diversion policies do not specify each charge that is eligible for diversion.

RESPONSE: Respondent admits that MCAO's diversions policies do not specify each charge that is eligible for diversion but notes that some are listed and the policies comply with the statutory requirements.

Request for Admission No. 4:

The MCAO's diversion policies do not specify every criteria for diversion eligibility, including what prior criminal justice system contacts (e.g., arrests, convictions, prior diversion) are disqualifying.

RESPONSE: Respondent admits that MCAO's diversions policies do not specify every criteria for diversion eligibility but notes that some are listed and the policies comply with the statutory requirements.

Request for Admission No. 5

As of the date of this request, the MCAO and/or the prosecutor(s) assigned to Petitioner Koehn's case had never notified Petitioner Koehn of the reason(s) he was not eligible for diversion, with reference to the MCAO's diversion policies.

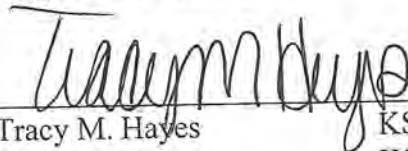
RESPONSE: Respondent admits that no one in the MCAO personally discussed diversion with Petitioner Tristan Koehn as he is represented by counsel. Respondent lacks knowledge or information regarding confidential communications between Petitioner and his experienced defense counsel who is familiar with the Montgomery County diversion programs.

Request for Admission No. 6

As of the date of this request, the MCAO and/or the prosecutor(s) assigned to Petitioner Wilson's case had never notified Petitioner Wilson of the reason(s) she was not eligible for diversion, with reference to the MCAO's diversion policies.

RESPONSE: Respondent admits that no one in the MCAO personally discussed diversion with Petitioner Karena Wilson as she was represented by counsel. Respondent lacks knowledge or information regarding confidential communications between Petitioner and her experienced defense counsel who was familiar with the Montgomery County diversion programs.

Respectfully submitted,



Tracy M. Hayes

KS #23119

Tyler M. Waugh

KS #28108

SANDERS WARREN RUSSELL & SCHEER LLP

40 Corporate Woods

9401 Indian Creek Parkway, Suite 1250

Overland Park, KS 66210

Phone: 913-234-6100

Fax: 913-234-6199

t.hayes@swrsllp.com

t.waugh@swrsllp.com

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 2019, a true and accurate copy of the foregoing was served via U.S. Mail, postage prepaid, upon:

Lauren Bonds

ACLU FOUNDATION OF KANSAS

6701 W. 64th Street, Suite 210

Overland Park, KS 66202

Phone: 913-490-4114

Fax: 913-490-4119

lbonds@aclukansas.org

ATTORNEYS FOR PETITIONERS

Zal K. Shroff

ACLU FOUNDATION OF KANSAS

125 N. Market Street, Suite 1725

Wichita, KS 67202

Phone: 316-636-7303

zshroff@aclukansas.org

ATTORNEYS FOR PETITIONERS


Attorney

Exhibit 4

Montgomery County District Court Search - Case Display

Case Number: 269

Case Year: 2017	<u>Case UID</u> : 2017-CR-000269-I-FE
Case Type: CR	Filed: 2017-06-21
Case Sub-type: Felony	Last Updated: 2019-02-26 at 09:29:27
Advisement Date:	Remand Date:
Appealed: N	Appealed Date:
Status Code: 2	Status Date: 2017-12-12
Status Description: Disposed	

Defendants

Party

Defendant Number: 1		
Last Name (or Business Name): Wilson		
First Name: Karena	Middle: Violet	<u>Suffix</u> :

Description

Sex: F	Race: White
Height: 5 feet, 09 inches	Weight: 175 pounds

Alias

Last Name: Wilson	First: Karena	Middle: Violet	<u>Suffix</u> :
-------------------	---------------	----------------	-----------------

Adjudications

Charge

Violation Date: 2017-06-14	Location: 407 W Railroad St, Hallet Liquor, Independence, KS
Plea: Nolo Contendre	Plea Date: 2017-12-12
Fines Assessed: 863.00	Date Assessed: 2006-07-01

Amended Charge - Statute

KSA Number: 21.5801.a.1.b4

KSA Text: Theft of property or services; Value less than \$1,500	
Chapter: 21	Degree: MDA
Level Class: Misdemeanor	Offense Class: Misdemeanor Class A
Attempted Conspiracy Solicitation:	
Felony or Misdemeanor: M	Drug or Non-Drug: Non Drug
Person or not: Undefined	Reporting Group: MISC
Statute Revision: 201612	Section: 5801
Sub-Section 1: a	Sub-Section 2: 1
Sub-Section 3: b4	Sub-Section 4:

Original Charge - Statute

KSA Number: 21.5801.a.1.b5	
KSA Text: Theft of property/services; \$1500 or less from 3 businesses in 72 hrs	
Chapter: 21	Degree: FE9
Level Class: Felony	Offense Class: Felony Level 09
Attempted Conspiracy Solicitation:	
Felony or Misdemeanor: F	Drug or Non-Drug: Non Drug
Person or not: Undefined	Reporting Group: MISC
Statute Revision: 201612	Section: 5801
Sub-Section 1: a	Sub-Section 2: 1
Sub-Section 3: b5	Sub-Section 4:

Officer

Last Name: Athey	First: Damon	Middle:
Police Reference: IPD:17-887		
Police Agency: (IPD) Independence Police Department		

Disposition

Disposition Date: 2017-12-12	Disposition Type:
Finding: Guilty Plea	
Indefinite Suspension Term: N	Suspension Type: None
License Suspension Date:	License Suspension Duration:
Sentencing Date: 2017-12-12	Sentencing Defer Date:
Modified Sentence: N	Modified Sentence Date:
Other Finding:	

Confinement

Life Sentence: N	Commuted Sentence: N
Confinement Type: Jail	Facility: Montgomery Co Dept of Corrections
Penitentiary Suspended: N	Complete by:

Duration: 12 months

Duration: 12 months

Defense Attorney

Last Name: Miller	First: Karen	Middle: Rebecca
Primary Attorney: Y	Court Appointed: Y	Conflict Attorney: Y
Withdrawn: N	Send Notices: Y	
Practice or Office:		

Registry of Actions

Action 1

Action Date: 2017-06-21	Action Type: COM
Action Agent: Jeffrey D Gossard	
Description: Complaint Document Title: Complaint Document ID: 386253	

Action 2

Action Date: 2017-06-21	Action Type: AFFD
Action Agent: Jeffrey D Gossard	
Description: Affidavit IPD 17-887 A-B Document Title: Affidavit Document ID: 386252	

Action 3

Action Date: 2017-06-21	Action Type: HEAR
Action Agent: Jeffrey D Gossard	
Description: Hearing Scheduled (First Appearance 06/27/2017 09:00 AM)	

Action 4

Action Date: 2017-06-21	Action Type: CAA
Action Agent: Jeffrey D Gossard	
Description: Defendant: Wilson, Karena Violet Court Appointed Attorney Public defender Bryan Rickman	

Action 5

Action Date: 2017-06-21	Action Type: CS
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Action Agent: Jeffrey D Gossard
Description: Custody Slip filed \$1500 cps bond Document Title: Custody Slip Filed Document ID: 386294

Action 6

Action Date: 2017-06-27	Action Type: FAPPH
Action Agent: Jeffrey D Gossard	
Description: Hearing result for First Appearance held on 06/27/2017 09:00 AM: First Appearance Held 17CR268, Austin Harris	

Action 7

Action Date: 2017-06-27	Action Type: HEAR
Action Agent: Jeffrey D Gossard	
Description: Hearing Scheduled (Status 07/18/2017 09:00 AM)	

Action 8

Action Date: 2017-06-28	Action Type: OACJ
Action Agent: Jeffrey D Gossard	
Description: Order Appointing Counsel Rickman Document Title: Order Appointing Attorney Document ID: 387125	

Action 9

Action Date: 2017-06-28	Action Type: INFEOA
Action Agent: Jeffrey D Gossard	
Description: ENRY OF APPEARANCE INF: Entry of Appearance	

Action 10

Action Date: 2017-06-28	Action Type: FA
Action Agent: Jeffrey D Gossard	
Description: Financial Affidavit Document Title: Financial Affidavit Document ID: 387276	

Action 11

Action Date: 2017-06-29	Action Type:
Action Agent: Jeffrey D Gossard	
Description: Email Sent Date: 06/29/2017 11:27 am To: Dodi Haynes (dhaynes@sbids.org) File Attached: FINANCIALAFFIDAVIT.pdf Name of Document: Financial Affidavit	

Action 12

Action Date: 2017-06-30	Action Type: URD
Action Agent: Jeffrey D Gossard	
Description: Agreed Order for Unredacted Discovery Document Title: Agreed Order for Unredacted Discovery Document ID: 387521	

Action 13

Action Date: 2017-07-13	Action Type: VIS
Action Agent: Jeffrey D Gossard	
Description: Victim Impact Statement Document Title: Victim Impact Statement Document ID: 389142	

Action 14

Action Date: 2017-07-13	Action Type: VIS
Action Agent: Jeffrey D Gossard	
Description: Victim Impact Statement Document Title: Victim Impact Statement Document ID: 389143	

Action 15

Action Date: 2017-07-13	Action Type: VIS
Action Agent: Jeffrey D Gossard	
Description: Victim Impact Statement Document Title: Victim Impact Statement Document ID: 389144	

Action 16

Action Date: 2017-07-18	Action Type: HRGHLD
Action Agent: Jeffrey D Gossard	
Description: Hearing result for Status held on 07/18/2017 09:00 AM: Hearing Held	

Action 17

Action Date: 2017-07-18	Action Type: HEAR
Action Agent: Jeffrey D Gossard	
Description: Hearing Scheduled (Select Preliminary Hearing date 08/29/2017 09:00 AM)	

Action 18

Action Date: 2017-08-08	Action Type: VIS
Action Agent: Jeffrey D Gossard	
Description: Victim Impact Statement Document Title: Victim Impact Statement Document ID: 392635	

Action 19

--	--

Action Date: 2017-08-29	Action Type: HRGHLD
Action Agent: Jeffrey D Gossard	
Description: Hearing result for Select Preliminary Hearing date held on 08/29/2017 09:00 AM: Hearing Held	

Action 20

Action Date: 2017-08-29	Action Type: HEAR
Action Agent: Jeffrey D Gossard	
Description: Hearing Scheduled (Preliminary 09/19/2017 01:30 PM)	

Action 21

Action Date: 2017-09-05	Action Type: SUBI
Action Agent: Jeffrey D Gossard	
Description: Subpoena: Subpoena Issued on 9/5/2017 on Officer: Athey, Damon, IPD; Taylor, Dustin, IPD; Waggoner, Bradley, IPD	

Action 22

Action Date: 2017-09-05	Action Type: SUBI
Action Agent: Jeffrey D Gossard	
Description: Subpoena: Subpoena Issued on 9/5/2017 on Witness: Watson, Dana Alle; Jones, Carol Lynn; Hallett, Jeremy Lee; Hollyfield, Holly; Nixon IV, Jewell Jay; David, Bradley Eugene; Harris, Austin James; Watson, Jason Allen	

Action 23

Action Date: 2017-09-06	Action Type: MOT
Action Agent: Jeffrey D Gossard	
Description: Motion to Endorse Witness - Austin Harris, Jason Watson, Bradley Davis Document Title: Motion to endorse Document ID: 395845	

Action 24

Action Date: 2017-09-06	Action Type: SUBS
Action Agent: Jeffrey D Gossard	
Description: Subpoena: Subpoena Served/Returned on 9/6/2017 on Witness: Davis, Bradley Eugene Document Title: Subpoena Returned - Served Document ID: 395900	

Action 25

Action Date: 2017-09-07	Action Type: SUBS

Action Agent: Jeffrey D Gossard

Description: Subpoena: Subpoena Served/Returned on 9/6/2017 on Officer: Taylor, Dustin, IPD; Waggoner, Bradley, IPD; Athey, Damon, IPD Document Title: Subpoena Returned - Served Document ID: 395905

Action 26

Action Date: 2017-09-08

Action Type: SUBS

Action Agent: Jeffrey D Gossard

Description: Subpoena: Subpoena Served/Returned on 9/8/2017 on Witness: Hollyfield, Holly

Action 27

Action Date: 2017-09-08

Action Type: SUBS

Action Agent: Jeffrey D Gossard

Description: Subpoena: Subpoena Served/Returned on 9/8/2017 on Witness: Watson, Dana Alle

Action 28

Action Date: 2017-09-08

Action Type: SUBS

Action Agent: Jeffrey D Gossard

Description: Subpoena: Subpoena Served/Returned on 9/8/2017 on Witness: Watson, Jason Allen

Action 29

Action Date: 2017-09-08

Action Type: SUBS

Action Agent: Jeffrey D Gossard

Description: Subpoena Served/Returned for 9/19/17 at 1 pm Document Title: Subpoena Served - Returned Document ID: 396114
--

Action 30

Action Date: 2017-09-08

Action Type: SUBS

Action Agent: Jeffrey D Gossard

Description: Subpoena: Subpoena Served/Returned on 9/6/2017 on Witness: Hallett, Jeremy Lee; Jones, Carol Lynn; Harris, Austin James; Nixon IV, Jewell Jay Document Title: Subpoena Returned - Served Document ID: 396212

Action 31

Action Date: 2017-09-19

Action Type: PHH

Action Agent: Jeffrey D Gossard

Description: Hearing result for Preliminary held on 09/19/2017 01:30 PM: Preliminary Hearing Held co-def: Harris, Davis, Nixon
--

Action 32

Action Date: 2017-09-20	Action Type: MOTG
Action Agent: Jeffrey D Gossard	
Description: MOTION FOR PRELIMINARY HEARING TRANSCRIPT MOT: Motion (Generic)	

Action 33

Action Date: 2017-09-21	Action Type: ORDNSR
Action Agent: Jeffrey D Gossard	
Description: ORDER FOR PRELIMINARY HEARING TRANSCRIPT ORD: Order (Generic)	

Action 34

Action Date: 2017-09-21	Action Type: ORD
Action Agent: Jeffrey D Gossard	
Description: Order to Endorse Witness Document Title: Order to endorse Document ID: 397843	

Action 35

Action Date: 2017-10-26	Action Type: HEAR
Action Agent: Jeffrey D Gossard	
Description: Hearing Scheduled (Arraignment 10/31/2017 09:00 AM)	

Action 36

Action Date: 2017-10-26	Action Type: TX
Action Agent: Jeffrey D Gossard	
Description: Transcript of Preliminary Hearing on 9/19/17 Document Title: Transcript of 9/19/17 Document ID: 402771	

Action 37

Action Date: 2017-10-31	Action Type: CONT
Action Agent: Jeffrey D Gossard	
Description: Hearing result for Arraignment held on 10/31/2017 09:00 AM: Continued	

Action 38

Action Date: 2017-10-31	Action Type: HEAR
Action Agent: Jeffrey D Gossard	
Description: Hearing Scheduled (Arraignment 11/21/2017 09:00 AM)	

Action 39

Action Date: 2017-11-21	Action Type: CONT
Action Agent: Jeffrey D Gossard	
Description: Hearing result for Arraignment held on 11/21/2017 09:00 AM: Continued	

Action 40

Action Date: 2017-11-21	Action Type: HEAR
Action Agent: Jeffrey D Gossard	
Description: Hearing Scheduled (Arraignment 12/12/2017 09:00 AM)	

Action 41

Action Date: 2017-12-12	Action Type: ARRPNC
Action Agent: Jeffrey D Gossard	
Description: Hearing result for Arraignment held on 12/12/2017 09:00 AM: Arraignment, plead no contest	

Action 42

Action Date: 2017-12-12	Action Type: PROB
Action Agent: Jeffrey D Gossard	
Description: Probation Ordered (21.5801.a.1.b5 Theft of property/services; \$1500 or less from 3 businesses in 72 hrs) Probation term: 12 months. (Supervision)	

Action 43

Action Date: 2017-12-12	Action Type: PLEA
Action Agent: Jeffrey D Gossard	
Description: Defendant's Acknowledgment of Rights and Entry of Plea Document Title: Def's Ack. of Rights/Petition to Enter Plea Purs. Agree. Document ID: 408482	

Action 44

Action Date: 2017-12-12	Action Type: PE
Action Agent: Jeffrey D Gossard	
Description: Plea Entered - NC (21.5801.a.1.b4 Theft of property or services; Value less than \$1,500)	

Action 45

Action Date: 2017-12-12	Action Type: GP
Action Agent: Jeffrey D Gossard	
Description: Guilty Plea (Guilty Plea 21.5801.a.1.b4 Theft of property or services; Value less than \$1,500)	

Action 46

Action Date: 2017-12-12	Action Type: STATUS
Action Agent: Jeffrey D Gossard	
Description: Case Status Change: Disposed	

Action 47

Action Date: 2017-12-12	Action Type: CONF
Action Agent: Jeffrey D Gossard	
Description: Sentenced to Confinement (21.5801.a.1.b4 Theft of property or services; Value less than \$1,500) Confinement terms: Jail: 12 months. Suspended jail: 12 months.	

Action 48

Action Date: 2017-12-14	Action Type: INFG
Action Agent: Jeffrey D Gossard	
Description: Conditions of Probation INF: Information (Generic)	

Action 49

Action Date: 2018-02-28	Action Type: ORDNSR
Action Agent: Jeffrey D Gossard	
Description: Rule 170 ORD: Order (Generic)	

Action 50

Action Date: 2018-02-28	Action Type: ORDJDG
Action Agent: Jeffrey D Gossard	
Description: Sent Journal Entry ORD: Judgment	

Action 51

Action Date: 2018-04-25	Action Type: AFFIG
Action Agent: Jeffrey D Gossard	
Description: 4/25/2018 Waiver of Right to Probation Violation Hearing AFF: Affidavit (Generic)	

Action 52

Action Date: 2018-04-25	Action Type:
Action Agent: Jeffrey D Gossard	
Description: Email Sent Date: 04/25/2018 02:54 pm To: rallen@mgso.us File Attached: 4252018WAIVEROFRIGHTTOPROBATIONVIOLATIONHEARING.pdf Name of Document: 4/25/2018	

Waiver of Right to Probation Violation Hearing

Action 53

Action Date: 2018-08-30	Action Type: AFFIG
Action Agent: Jeffrey D Gossard	
Description: 8/30/2018 Affidavit AFF: Affidavit (Generic)	

Action 54

Action Date: 2018-08-30	Action Type: INFG
Action Agent: Jeffrey D Gossard	
Description: 8/30/2018 Arrest and Detain INF: Information (Generic)	

Action 55

Action Date: 2018-08-31	Action Type: SR
Action Agent: Jeffrey D Gossard	
Description: Sheriff's Return of A/D Document Title: Sheriffs Return Document ID: 448218	

Action 56

Action Date: 2018-08-31	Action Type: HEAR
Action Agent: Jeffrey D Gossard	
Description: Hearing Scheduled (Admission/Denial 09/11/2018 09:00 AM)	

Action 57

Action Date: 2018-08-31	Action Type: BSET
Action Agent: Jeffrey D Gossard	
Description: Bond Set at \$50,000 c/ps to cover 17CR269 and 18CR363	

Action 58

Action Date: 2018-09-04	Action Type: FA
Action Agent: Jeffrey D Gossard	
Description: Financial Affidavit Document Title: Financial Affidavit Filed Document ID: 448785	

Action 59

Action Date: 2018-09-06	Action Type: MOTTRN
Action Agent: Jeffrey D Gossard	
Description: Motion for Transcript MOT: Transcript	

Action 60

Action Date: 2018-09-06	Action Type: ORDTRN
Action Agent: Jeffrey D Gossard	
Description: Order for Transcript ORD: Transcript	

Action 61

Action Date: 2018-09-07	Action Type: KADR
Action Agent: Jeffrey D Gossard	
Description: KADR Document Title: KADR Document ID: 449200	

Action 62

Action Date: 2018-09-11	Action Type: AOR
Action Agent: Jeffrey D Gossard	
Description: Defendant: Wilson, Karena Violet Attorney of Record Karen Rebecca Miller	

Action 63

Action Date: 2018-09-11	Action Type: CONT
Action Agent: Jeffrey D Gossard	
Description: Hearing result for Admission/Denial held on 09/11/2018 09:00 AM: Continued	

Action 64

Action Date: 2018-09-11	Action Type: HEAR
Action Agent: Jeffrey D Gossard	
Description: Hearing Scheduled (Admission/Denial 10/02/2018 09:00 AM)	

Action 65

Action Date: 2018-09-11	Action Type: ORDAPTC
Action Agent: Jeffrey D Gossard	
Description: ORDER APPOINTING COUNSEL ORD: Appoint - Counsel	

Action 66

Action Date: 2018-10-02	Action Type: HRGHLD
Action Agent: Jeffrey D Gossard	
Description: Hearing result for Admission/Denial held on 10/02/2018 09:00 AM: Hearing Held	

Action 67

--

Action Date: 2018-10-02	Action Type: HEAR
Action Agent: Jeffrey D Gossard	
Description: Hearing Scheduled (Evidentiary 10/23/2018 01:30 PM)	

Action 68

Action Date: 2018-10-08	Action Type: MOTG
Action Agent: Jeffrey D Gossard	
Description: Motion For Special Setting to Reduce Bond MOT: Motion (Generic)	

Action 69

Action Date: 2018-10-10	Action Type: DISSUB
Action Agent: Jeffrey D Gossard	
Description: 17CR269 indep subp ORD: Subpoena - Clerk Signed	

Action 70

Action Date: 2018-10-10	Action Type: SUBS
Action Agent: Jeffrey D Gossard	
Description: Subpoena Served/Returned Document Title: Subpoena Served - Returned Document ID: 454860	

Action 71

Action Date: 2018-10-23	Action Type: CONT
Action Agent: Jeffrey D Gossard	
Description: Hearing result for Evidentiary held on 10/23/2018 01:30 PM: Continued	

Action 72

Action Date: 2018-10-23	Action Type: HEAR
Action Agent: Jeffrey D Gossard	
Description: Hearing Scheduled (Evidentiary 11/13/2018 01:30 PM)	

Action 73

Action Date: 2018-10-26	Action Type: DISSUB
Action Agent: Jeffrey D Gossard	
Description: 17CR269 Subp Indep ORD: Subpoena - Clerk Signed	

Action 74

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Action Date: 2018-10-29	Action Type: SUBS
Action Agent: Jeffrey D Gossard	
Description: Subpoena Served/Returned Document Title: Subpoena Served - Returned Document ID: 457430	

Action 75

Action Date: 2018-11-13	Action Type: HRGHLD
Action Agent: Jeffrey D Gossard	
Description: Hearing result for Evidentiary held on 11/13/2018 01:30 PM: Hearing Held	

Action 76

Action Date: 2018-11-13	Action Type: HEAR
Action Agent: Jeffrey D Gossard	
Description: Hearing Scheduled (Disposition 01/15/2019 09:00 AM)	

Action 77

Action Date: 2019-01-15	Action Type: CONT
Action Agent: Jeffrey D Gossard	
Description: Hearing result for Disposition held on 01/15/2019 09:00 AM: Continued	

Action 78

Action Date: 2019-01-15	Action Type: HEAR
Action Agent: Jeffrey D Gossard	
Description: Hearing Scheduled (Disposition 02/26/2019 09:00 AM)	

Action 79

Action Date: 2019-02-26	Action Type: HRGHLD
Action Agent: Jeffrey D Gossard	
Description: Hearing result for Disposition held on 02/26/2019 09:00 AM: Hearing Held	

Action 80

Action Date: 2019-03-20	Action Type: ORDJDG
Action Agent: Jeffrey D Gossard	
Description: Journal Entry ORD: Judgment	

Action 81

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Action Date: 2019-04-01	Action Type: ORDJDG
Action Agent: Jeffrey D Gossard	
Description: Journal Entry ORD: Judgment	

Action 82

Action Date: 2019-04-02	Action Type:
Action Agent: Jeffrey D Gossard	
Description: Email Sent Date: 04/02/2019 01:27 pm To: casey.kanicki@ks.gov File Attached: JOURNALENTY.pdf Name of Document: Journal Entry	

Action 83

Action Date: 2019-04-04	Action Type: CS
Action Agent: Jeffrey D Gossard	
Description: Custody Slip filed serve balance of sentence in MGD OC Document Title: Custody Slip Filed Document ID: 479328	

Case Judge

Last Name: Gossard	First: Jeffrey	Middle: D	Suffix:
--------------------	----------------	-----------	---------

Prosecutors

Attorney 1

Last Name: Markle	First: Larry	Middle:
Primary Attorney: N	Court Appointed: N	Conflict Attorney: N
Withdrawn: N	Send Notices: N	
Practice or Office:		

Last Name: Montgomery	First: Lisa	Middle: D
Primary Attorney: Y	Court Appointed: N	Conflict Attorney: N
Withdrawn: N	Send Notices: Y	
Practice or Office:		

Exhibit 5

IN THE SUPREME COURT OF THE STATE OF KANSAS

KANSAS CROSSROADS FOUNDATION;
and KARENA WILSON;

Petitioners,

vs.

LARRY MARKLE, in his official capacity as
County Attorney of Montgomery County;

Respondent.

Original Action No. _____

DECLARATION OF KARENA WILSON

1. I, Karena Violet Wilson, have personal knowledge of the matters in this Declaration and could and would competently testify to these facts.
2. I am 19 years old and a resident of Montgomery County, Kansas. I have lived in Independence, Montgomery County, Kansas since I was about 11 years old.
3. Prior to my June 2017 arrest for theft, I had never been charged with a crime.
4. On or about June 14, 2017, I was driving around Independence with my boyfriend. A person whom we did not know well asked us for a ride to the north part of town. My boyfriend agreed and the person got in our car. When we arrived at a liquor store, the person suggested we start breaking into soda machines. He then got out of the car and broke into a soda machine and took the coin collection box inside.
5. The Independence Police Department learned that we had driven the person who had broken into the soda machine to the liquor store. Even though my boyfriend and I assisted the police in identifying the person who broke into the machines, we were both charged with theft as accomplices.
6. My bond was set at \$1,500, and I spent three days in jail.
7. I was initially charged with felony theft of property of \$1,500 or less from three businesses in 72 hours.



8. I had to appear in court approximately five times for this case.
9. On or about December 12, 2017, my charges were reduced to three counts of misdemeanor theft of property less than \$1,500. I pled guilty to the misdemeanor charges.
10. I was sentenced to one year of probation. The terms of my probation require me to pay approximately \$2,300 in fines. I have made payments toward the fine whenever I can but still have close to \$2,000 left to pay.
11. I am also required to be employed as part of my probation. Even though I have a job paying minimum wage as a housekeeper at a hotel, my probation officer has told me that I need to get a higher paying job at a factory.
12. I had to spend an additional three days in jail in April 2018 for a probation violation.
13. At no point before I took my plea deal did anyone from the Montgomery County Attorney's Office (MCAO), including County Attorney Larry Markle, provide me with written notice of the MCAO's diversion policies and guidelines.
14. Additionally, nobody in the MCAO ever verbally told about their diversion program. Because this is my first time getting in trouble with the law, I had never heard of a diversion.
15. Since being sentenced to probation, I have learned that the MCAO will consider offering diversions to people charged with misdemeanors if it is their first time offense and they will otherwise benefit from diversion.
16. I would have applied for the MCAO diversion program if the MCAO had given me notice of any kind.
17. Even if MCAO ultimately denied my application, I feel that I would have benefited from being fully informed about my options.
18. The opportunity to apply for a diversion would have given me the possibility of a second chance to have a clean criminal record and could have helped me avoid my current and likely future limitations in employment and other endeavors.

I declare under penalty of perjury that the foregoing statements, including all statements in this Declaration, are true and correct.

Executed on June 6, 2018.

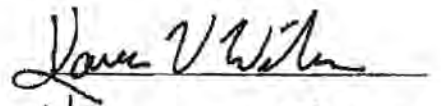

Karena Wilson

Exhibit 6

In The Matter Of:
Karena Wilson and Tristan Koehn v.
Larry Markle

Karena V. Wilson
May 7, 2019

Midwest Reporters, Inc.
800-528-3194
www.midwestreporters.net
office@midwestreporters.net



Original File 5-07-19 Karena V. Wilson.txt

Min-U-Script®

1 Q. Was your probation, then, violated based on
2 that?

3 MS. BONDS: Objection, calls for her
4 to form a legal opinion.

5 A. Yes.

6 BY MS. HAYES:

7 Q. Do you have an understanding of whether or not
8 you would have had issues with your diversion
9 if you had been arrested for another crime
10 while on diversion?

11 MS. BONDS: Same objection, calls for
12 her to speculate and calls for her to form a
13 legal opinion.

14 A. I don't know -- I didn't know.

15 Q. Okay. Do you have an understanding of whether
16 or not your charges related to probation -- or
17 let's strike that. Let me start that all over,
18 because that was a horribly worded question.

19 What is your understanding on your
20 ability to have charges expunged at the
21 conclusion of probation?

22 MS. BONDS: Objection, calls for her
23 to speculate, calls for her to form a legal
24 opinion.

25 Answer -- answer to the best of your

1 A. I've made like \$20 payments here and there, but
2 nothing significant, no.

3 Q. Do you understand that there is a \$300 fee to
4 apply for diversion?

5 A. No, I did not understand that.

6 Q. Would you have been able to afford to pay a fee
7 of \$300 to apply for diversion?

8 MS. BONDS: Objection, calls for her
9 to speculate.

10 A. Me, probably not, but my boyfriend would
11 probably pay for it for me, so I probably could
12 have gotten it.

13 BY MS. HAYES:

14 Q. And was that Mr. Harris?

15 A. Yes.

16 Q. And Mr. Harris was also arrested in
17 relationship to these theft charges, correct?

18 A. Yes.

19 Q. Was he also incarcerated as part of that?

20 A. Yes.

21 Q. Now, in paragraph 12 there is a reference that
22 you had to spend an additional three days in
23 jail for a probation violation in April of
24 2018.

25 What violation was that?

1 A. I didn't have a job -- well, I had a job, but
2 it wasn't a -- like I didn't show my deposit
3 slip -- check slips or whatever, proof of my
4 checks.

5 (Exhibit No. 3 was marked for the
6 record.)

7 BY MS. HAYES:

8 Q. I'm going to hand you what I'm marking as
9 Exhibit 3, which is a waiver of right to a
10 probation violation hearing dated April of 2018
11 in which paragraph 1 states, "Failure to work
12 faithfully at suitable employment insofar as
13 possible. Defendant has been unemployed for
14 five consecutive months. The defendant has
15 also failed to return her job log on two
16 separate appointments. The defendant has
17 failed to show any proof of completing
18 application."

19 Is that the lack of job probation
20 violation that you're referring to?

21 A. Yes.

22 Q. And what was the result of this probation
23 violation, do you recall?

24 A. Three days in jail.

25 Q. Anything else?

1 Q. What jobs did you not get because of your theft
2 arrest?

3 A. There was a sports store in Independence that I
4 applied for and I interviewed for, and I told
5 them about my theft charges and they told me,
6 because of that, I probably wouldn't be getting
7 the job because of the whole theft thing, I
8 mean.

9 Q. When -- or what's the name of that store?

10 A. I don't really remember. It's -- I know it's
11 next to Goody's in Independence, but I don't
12 remember the actual name of it.

13 Q. When did you apply for that job and do the
14 interview?

15 A. It was after I took the plea deal, I know that,
16 so it was in 2018. I don't remember exactly
17 when.

18 Q. Was it prior to your arrest in Neosho?

19 A. Yes.

20 Q. So prior to being arrested in Neosho in
21 November of 2017, you think, you had applied
22 for that job?

23 A. It was like -- it was after, 2018. I know it
24 was 2018.

25 Q. So did you disclose to that sports store both

Exhibit 7

COUNTY ATTORNEY'S PROCEDURE FOR DIVERSIONS

1. The defendant must fill out and submit the application form.
2. The County Attorney's Office will check for criminal records through NCIC and KBI.
3. The defendant must be charged with a crime specified for eligibility in the diversion guideline:
 - a. **DUI – 1st**
 1. Non-Injury accident (excludes person charged with DUI); and
 2. Non-Death Accident.
 - b. **Fish and Game Violations:**
 1. The county attorney may enter into a diversion agreement in lieu of further criminal proceedings on a complaint for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, if such diversion carries the same penalties as the conviction for the corresponding violations. *The minimum diversion fee is \$100.00*
 2. If the defendant has previously participated in one or more diversions for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, then each subsequent diversion shall carry the same penalties as the conviction for the corresponding violations. *The county attorney may also charge an additional diversion fee.*
 - c. **Traffic Infractions/Misdemeanors:**
 1. Driver's License must be in good standing before the Diversion is filed with the Court.
 2. Insurance current at time of offense or brought current before the Diversion is filed with the Court.
 3. On speeding cases, no more than 30 m.p.h. over posted maximum; and no speeds in excess of 100 m.p.h.
 4. On diversion of a ticket, the minimum diversion fee will be \$100.00. The fine and costs will also be collected.
 5. The Diversion Agreement must be in this office, together with all costs, fines and diversion fees, prior to the court date on the Notice to Appear. Failure to return the Diversion Agreement, along with the required fees, to this office prior to the court date on the Notice to Appear may result in either an additional administrative fee or revocation of the diversion offer.
 6. Eligible offenses: All cases, EXCEPT where there has been an accident or in which drugs and/or alcohol is involved.
 7. The offender can have only 2 other moving violations in the last year immediately preceding issuance of the ticket.



8. This privilege cannot be exercised more often than twice every 12 months.
9. There can be no alcohol or drug related offenses.
10. Length of Diversion shall be 90 days for speeds 1-15 MPH over the speed limit and other minor offenses and Six (6) months for speeds 16-30 MPH over the speed limit.

d. Other Crimes: Factors to consider. In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the county attorney shall consider at least the following factors among all factors considered:

1. The nature of the crime charged and the circumstances surrounding it;
2. Any special characteristics or circumstances of the defendant;
3. Whether the defendant is a first-time offender and if the defendant has previously participated in diversion, according to the certification of the Kansas bureau of investigation or the division of vehicles of the department of revenue;
4. Whether there is a probability that the defendant will cooperate with and benefit from diversion;
5. Whether the available diversion program is appropriate to the needs of the defendant;
6. The impact of the diversion of the defendant upon the community;
7. Recommendations, if any, of the involved law enforcement agency;
8. Recommendations, if any, of the victim;
9. Provisions for restitution; and
10. Any mitigating circumstances.

e. A Defendant shall not be eligible for Diversion if:


1. The complaint alleges a violation of K.S.A. 8-1567 and amendments thereto and the defendant: (A) Has previously participated in diversion upon a complaint alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute; (B) has previously been convicted of or pleaded *nolo contendere* to a violation of that statute or a violation of a law of another state or of a political subdivision of this or any other state, which law prohibits the acts prohibited by that statute; or (C) during the time of the alleged violation was involved in a motor vehicle accident or collision resulting in personal injury or death; or
2. The complaint alleges that the defendant committed a class A or B felony or for crimes committed on or after July 1, 1993, an off-grid crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity level 1 or 2 felony for drug crimes.
3. If all criteria are met, and
 - a. A Defendant is not represented by an Attorney, the County Attorney's Office or ADSAP officer, will draft a Diversion and

contact the defendant to review the agreement. **If approved**, the agreement will be filed.

b. A Defendant is represented by an Attorney, the Attorney, will draft a Diversion and contact the defendant to review the agreement. **If approved**, the agreement will be filed.

4. The defendant must pay the costs, fines, fees and restitution prior to the filing of the Diversion.

5. Diversion agreements will be reviewed regularly to check compliance; if violated, a Motion to Revoke will be filed.



LARRY MARKLE
MONTGOMERY COUNTY ATTORNEY

Effective: 7/1/08

Exhibit 8

Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com

FILED
2017 AUG 14 PM 1:34
CLERK OF DISTRICT COURT
MONTGOMERY CO. KS
BY _____

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 2017-CR- 348 I (C)

Caleb James Garrison,
1468 CR 5500
Coffeyville, KS 67337

Defendant.

AGENCY: Coffeyville Police Department #17-6801

INFORMATION

COMES NOW the State of Kansas, by and through Larry Markle, duly qualified and acting Montgomery County, County Attorney, for and on behalf of the State of Kansas alleges and states for its *Information* against the defendant, **Caleb James Garrison**:

COUNT I

Theft of property or services; Value \$1,500 to \$25,000

That on or between the 18th day of May, 2017 and the 18th day of July, 2017, in Montgomery County, Kansas, Caleb James Garrison did unlawfully and feloniously obtain or exert unauthorized control over property or services worth at least \$1,500.00 but less than \$25,000.00, with the intent to permanently deprive the owner, to-wit: Taylor Crane & Rigging Inc, of the possession, use or benefit of such property or services, all in violation of K.S.A. 21-5801(a)(1). Theft, a severity level 9 nonperson felony. (Penalty: From a minimum of 5 months to a maximum of 17 months in prison and a fine of up to \$100,000; Postrelease supervision term of 12 months. K.S.A. 21-6804, K.S.A. 21-6611, K.S.A. 22-3717, and amendments thereto.)

All of the said acts then and there committed being contrary to the statutes in such cases made and provided and being against the peace and dignity of the State of Kansas.

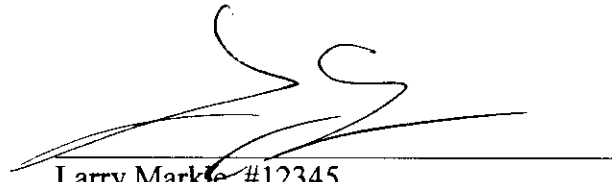
WITNESSES:

State v. Caleb James Garrison
2017-TC- 000351-I- -T

Complaint/Information
Page 1

Ex. 8-001

Thomas Darbro
Taylor Crane & Rigging Inc
Fred Fisher
Ron B. Jefferson

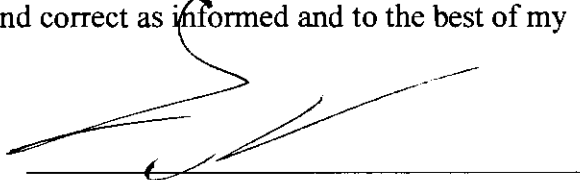


Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com

VERIFICATION

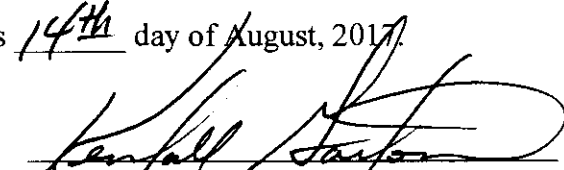
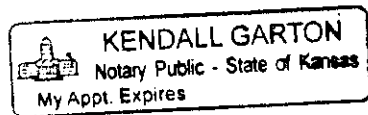
STATE OF KANSAS)
) ss.
COUNTY OF MONTGOMERY)

Larry Markle, duly qualified and acting County Attorney, authorized and empowered to prosecute for and on behalf of the State of Kansas, Montgomery County, of lawful age, being first duly sworn on oath deposes and states that the matters and things set forth and contained in the above and foregoing *Information* are true and correct as informed and to the best of my knowledge and belief, so help me God.



Larry Markle, #12345
County Attorney

Subscribed and sworn to before me this 14th day of August, 2017.


Notary Public
My term expires: 6/4/2018

FILED

2017 DEC 12 AM 11:35

Timothy J. Grillo, #11415
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: timgrillotaca@gmail.com

CLERK OF DISTRICT COURT
MONTGOMERY COUNTY, KANSAS

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 17-CR-348-I

Caleb James Garrison,

1468 CR 5500

Coffeyville, KS 67337

White/male; DOB: XX/XX/1998

Defendant.

DIVERSION AGREEMENT

This diversion agreement is entered into on this 30th day of October, 2017, by the above-captioned parties with the approval of their attorneys, if any, and shall continue in force and effect for a term of 12 months.

1. I, the Defendant, fully understand and agree to the following:

- a. C.J.G. My full name is Caleb James Garrison.
- b. C.J.G. My full name at the time the information or complaint in this case was filed was:
Caleb James Garrison.
- c. C.J.G. I have been charged with the following crime(s), filed in the District Court of Montgomery County, Kansas, via *Complaint* or *Complaint/Information* on 8/4/2017:

Count 1

State v. Caleb James Garrison
17-CR-348-I

Diversion Agreement
Page 1 of 5

Ex. 8-003

Theft of property or services; Value \$1,500 to \$25,000

- d. C.J.6 I have the right to demand a prompt, full and complete evidentiary hearing and trial in this matter.
 - e. C.J.6 I have been advised of the right to counsel and given ample time to consult with an attorney before entering this agreement and, if choosing to represent myself, am voluntarily waiving the right to have an attorney represent me concerning this agreement.
 - f. C.J.6 The prosecution of this matter is being deferred pursuant to K.S.A. 22-2906, *et seq.*, and the policies and guidelines of the County Attorney, which have been provided to me in writing and which I have been given ample time to read.
 - g. C.J.6 I understand that diversions of certain crimes may be used to enhance the severity level of certain crimes if I am charged with them in the future.
 - h. C.J.6 I understand that if I am not a citizen of the United States a diversion or conviction for a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.
 - i. C.J.6 I understand that I may be eligible for expungement of this diversion pursuant to K.S.A. 21-6614, and amendments thereto.
2. I, the Defendant, agree to do each of the following things:
- a. C.J.6 I waive all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment.
 - b. C.J.6 I waive all rights under the law or the constitution of Kansas or of the United States to preliminary examinations and hearings.
 - c. C.J.6 I waive all rights under the law or the constitution of Kansas or of the United States to a speedy trial.
 - d. C.J.6 I waive all rights under the law or the constitution of Kansas or of the United States to a trial by jury.
 - e. C.J.6 I agree not to violate the laws of the United States, of any State, or of any political subdivision of any State during the term of this diversion agreement. Traffic infractions shall not be considered violations of the law.
 - f. C.J.6 I agree to notify my attorney and the County Attorney in writing within seven (7) days of any change in address, telephone number or place of employment and not to move from the State without the prior approval of the County Attorney's Office. Any mail addressed to me at my last known address returned to the County Attorney's Office

or to the District Court as not deliverable, no forwarding address on file, etc., will be considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.

- g. CS6 I stipulate that I am the individual named in the Information, and that the offense(s) charged occurred in Montgomery County, Kansas. I agree that the facts as set forth in *Addendum A Stipulation of Facts* are true and accurate. I further stipulate to the facts as contained in the official report by:

Coffeyville Police Department, Report Number: 17-6801 ,
written witness statements, and any lab or other test results prepared or taken in connection with this case as being true and accurate. I am agreeing to and waiving my right to require the State to call witnesses to testify, and that I am waiving my rights under the law or the constitution of Kansas or of the United States to confront those witnesses or to call witnesses to testify on my behalf.

- h. CS6 I agree and understand that violation of the terms and conditions of this agreement will result in revocation of diversion and this matter proceeding to trial based solely upon the *Complaint* or *Complaint/Information*, *Addendum A Stipulation of Facts*, official reports identified above, written witness statements, lab or other test results, and any other evidence associated with this case. I stipulate that the previously described items shall be admitted into evidence without objection by me and without further foundation. I further stipulate that any trial on this matter and any proceedings on appeal shall be conducted solely on the stipulations contained herein, and that I will not be entitled to present additional evidence at the trial of the matter or any proceedings on appeal.

- i. CS6 I agree to pay as follows:

Payment of Diversion cost - All Payments must be submitted to the Clerk of the Montgomery County District Court; the Court accepts cash, money orders or cashier's checks.

I shall pay as follows:

Diversion fee:	\$300.00
Fine	\$100.00
Court costs:	\$193.00
Fingerprint fee:	<u>\$ 45.00</u>
Total:	\$638.00

All costs and fees will be paid at the time of signing the diversion agreement. The diversion agreement will not be processed until all monies due are paid into the District Court.

Any cash bond posted by me shall be applied to the balance due. The cash bond cannot be used to pay the diversion cost or court costs. Any remaining cash bond, after being applied to amounts due, will be returned to me.

j. CSG I acknowledge and understand that if this diversion is revoked, the criminal proceedings on the original charge(s) will be resumed and the clauses waiving all rights to a speedy trial, all rights to preliminary examinations and hearings, and all rights to a trial by jury, will remain in effect. I acknowledge and understand that *Addendum A Stipulation of Facts* and all stipulations set forth in paragraphs 2(h) and 2(i) will remain in effect. I acknowledge and understand that if the Court finds me guilty, the Court may impose any and all fines and/or incarceration as allowed by law for the original charge(s).

k. CSG I agree that the County Attorney's Office shall have thirty (30) days following expiration of this diversion to discover violations of this diversion and to proceed thereon.

l. CSG **Special Conditions:**

3. The State agrees to do each of the following things:

- a. To suspend prosecution of the captioned case so long as the Defendant continues to fulfill the terms and conditions of the diversion agreement.
- b. To dismiss with prejudice and with costs assessed to the Defendant all charges in the captioned case at the end of the diversionary term upon a satisfactory showing that the Defendant has successfully fulfilled the terms of the diversion agreement.

The parties understand that it is the Defendant's responsibility to provide the County Attorney's Office with any documentation required by this agreement.

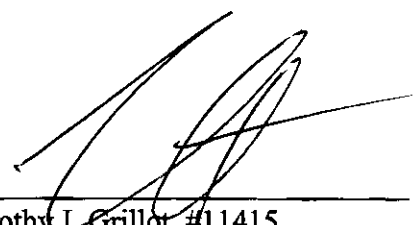
The parties understand that if a motion to revoke diversion and reinstate prosecution is filed, the motion to revoke diversion and reinstate prosecution and a notice of hearing will be mailed directly to the last address provided by the Defendant. It is the Defendant's responsibility to contact his or her attorney in reference to the motion to revoke diversion and reinstate prosecution.

The parties understand and agree that should any section, subsection, sentence, clause, phrase, provision, or exemption of these rules and regulations be declared invalid for any reason, such invalidity shall not affect the remaining portions or provisions contained within the diversion agreement.

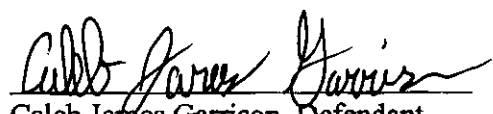
By signing this agreement, I, the Defendant, agree, affirm and stipulate that I have read the entire diversion agreement, understand all of its terms and their meaning, including the rights I am waiving and the obligations I am assuming, and that my decision to enter this agreement is my own free and voluntary act.

Dated this 30th day of October, 2017.

By: State of Kansas, by


Timothy L. Grillo, #11415
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230

I have read this diversion agreement, fully understand its contents, and agree to its provisions.


Caleb James Garrison, Defendant

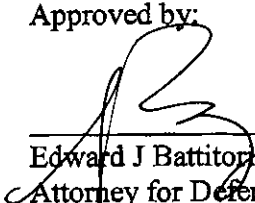
Current Address:

1468 CR 5500
Coffeyville, KS 67337

Telephone:

(620) 717-2555

Approved by:


Edward J Battitori, #14620
Attorney for Defendant
612 South Cypress Street
Cherokee, KS 66724
Phone: (620) 457-8008
FAX: (620) 457-8007
Email: ebattitori@gmail.com
ATTORNEY FOR DEFENDANT

Gregory T Benefiel, #22484
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: gregorybenefiel@gmail.com

FILED

2015 JUN 30 AM 11:36

CLERK OF DISTRICT COURT
INDEPENDENCE, KANSAS

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 2015-CR- 331 I(C)

Lyndzie Ann VanGurp,

406 W 1st St
Coffeyville, KS 67337

Defendant.

AGENCY: Coffeyville Police Department #15-5112

COMPLAINT / INFORMATION

COMES NOW the State of Kansas, by and through Gregory T Benefiel, duly qualified and acting Montgomery County Assistant County Attorney, for and on behalf of the State of Kansas alleges and states for its *Complaint/Information* against the defendant, **Lyndzie Ann VanGurp**:

COUNT I
Residential Burglary

That on or about the 11th day of June, 2015 and the 12th day of June, 2015, in Montgomery County, Kansas, Lyndzie Ann VanGurp did unlawfully, feloniously, and without authority enter into, or remain within, a structure which is a dwelling, to-wit: 821 Lincoln St, Coffeyville, Kansas, belonging to James Pruitt, with the intent to commit a theft therein, all in violation of K.S.A. 21-5807(a)(1). Residential Burglary, a severity level 7 person felony. (Penalty: From a minimum of 11 months to a maximum of 34 months in prison and a fine of up to \$100,000; Postrelease supervision term of 12 months. K.S.A. 21-6804 and K.S.A. 21-6611.)

State v. Lyndzie Ann VanGurp
2015-TC-390 I(C) (CR)

Complaint/Information
Page 1 of 3

Ex. 8-008

COUNT II
Theft - Value less than \$1,000

That on or about the 11th day of June, 2015 and the 12th day of June, 2015, in Montgomery County, Kansas, Lyndzie Ann VanGurp, did then and there unlawfully obtain or exert unauthorized control over property or services worth less than \$1,000.00, to-wit: Metal box with misc. personal items, with the intent to permanently deprive the owner, to-wit: James Pruitt and/or Shawn Pruitt, of the possession, use or benefit of such property or services, all in violation of K.S.A. 21-5801(a)(1). Theft, a Class A nonperson misdemeanor. (Maximum penalty: One year in county jail and a fine of up to \$2500. K.S.A. 21-6602 and K.S.A. 21-6611.)

COUNT III
Criminal Damage to Property - Less Than \$1000


That on or about the 11th day of June, 2015 and the 12th day of June, 2015, in Montgomery County, Kansas, Lyndzie Ann VanGurp did, by means other than fire or explosive, unlawfully and knowingly damage, deface, destroy or substantially impair the use of property, to-wit: Door and door frame, in which another, James Pruitt, has an interest, without the consent of said other person, and said property is of the value of \$1,000.00 or more, but was damaged to the extent of less than \$1,000.00, all in violation of K.S.A. 21-5813(a)(1). Criminal Damage to Property, a Class B nonperson misdemeanor. (Maximum penalty: Six months in county jail and a fine of up to \$1000. K.S.A. 21-6602 and K.S.A. 21-6611.)

All of the said acts then and there committed being contrary to the statutes in such cases made and provided and being against the peace and dignity of the State of Kansas.

WITNESSES:

Cody Rexwinkle
James M Pruitt
Joneitha L Hamby
Chelsea L Nolte

Cody W Sanford
Mark J VanGurp
Michelle A VanGurp
Shawn M Pruitt

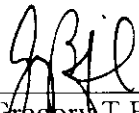


Gregory T Benefiel, #22484
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: gregorybenefiel@gmail.com

VERIFICATION

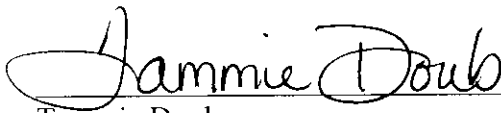
STATE OF KANSAS)
) ss.
COUNTY OF MONTGOMERY)

Gregory T Benefiel, duly qualified and acting Assistant County Attorney, authorized and empowered to prosecute for and on behalf of the State of Kansas, Montgomery County, of lawful age, being first duly sworn on oath deposes and states that the matters and things set forth and contained in the above and foregoing *Complaint/Information* are true and correct as informed and to the best of my knowledge and belief, so help me God.

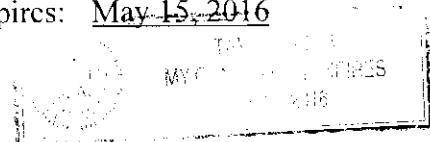


Gregory T Benefiel, #22484
Assistant County Attorney

Subscribed and sworn to before me this 29th day of June, 2015.



Tammie Doub
Notary Public
My term expires: May 15, 2016



IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS
SITTING AT INDEPENDENCE

FILED

2016 JAN -3 AM 8:19
2017

STATE OF KANSAS,

vs.

LYNDZIE ANN VanGRUP,

JOHN FRATEL
CLERK OF DISTRICT COURT
MONTGOMERY CO. KS
BY ny No. 016-GR331-IC
15

Defendant.

DIVERSION AGREEMENT
PRE-TRIAL RELEASE AND GENERAL CONTINUANCE ORDER

NOW on this day of 2016, Defendant appears in person and with counsel, Bruce E. Borders. The State appears by David Maslen, Assistant County Attorney. By joint agreement, the State agrees to place the defendant on diversion of prosecution and the defendant agrees to continue the case for a period of six (6) months.

THE COURT, being fully advised in the premises, finds that the defendant was charged on the 30th day of June 2016, with three criminal offenses and that subsequent thereto a First Amended Complaint has been filed herein charging her with Possession of Stolen Property as a misdemeanor, and as defined in K.S.A. 21-5813(a)(4) and that misdemeanor charge is in full force and effect.

THE COURT FURTHER FINDS THAT:

1. The defendant is a Caucasian Female, her date of birth is 12/**/199*, and her Social Security number is ***-**-9368.
2. The defendant has voluntarily waived her right to a speedy trial with advice of counsel.
3. The defendant stipulates to the factual basis for the charges as set forth in the First Amended Complaint/Information

and supporting Affidavit.

4. The defendant understands that the State must prove her guilty beyond a reasonable doubt and that she has a right to trial.

5. The defendant understands that during the period of diversion of prosecution, the charge pending against her will remain in full force and effect and that the said matter may be set for trial prior to the end of the diversion period upon termination of the agreement by any party to this agreement.

6. That upon successful completion of the diversion period, the Complaint will be dismissed with prejudice by the State of Kansas.

IT IS THEREFORE BY THE COURT ORDERED that said defendant be, and is hereby, released pending trial or disposition for a period of six (6) months, conditioned upon the successful completion of the diversionary program and upon the following conditions, to-wit:

1. That she refrains from violating any of the laws of the United States or of any state, or ordinances of any city or town.
2. That she report to this office or any other person, at any time that he may be requested to do so by this office.
3. That she conduct herself at all times as a law abiding citizen.
4. That she notify the County Attorney's office of her current address or any change of address.
5. That she pay the costs of the action in the amount of \$158.00 court costs, a \$300.00 diversion fee, and the statutory


finger print fee of \$45.00. Said costs, assessments and fees are to be paid in full at the time of the filing of the Diversion by money order or other certified funds payable to the Clerk of the District Court.

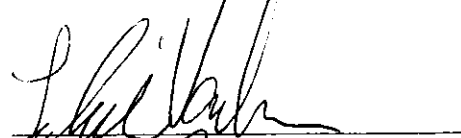
Violation of any of the conditions of this supervision may result in revocation or modification of this diversion program. You will be furnished with notice, at your last known address as shown in our files from your most recent reporting document, specifying the conditions of your program which you have violated.

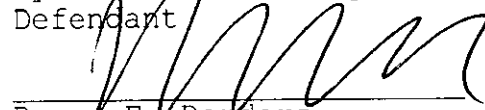
The County Attorney may release you from supervision at any time.

The Court or the defendant hereby reserves the right to terminate this agreement for cause at any time prior to the successful completion of the term of the diversion program and demand the matter be set immediately for trial.

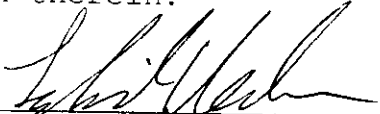
APPROVED BY:


David Maslen #11096
Assistant COUNTY ATTORNEY


Lyndzie Ann VanGrup
Defendant



Bruce E. Borders
ATTORNEY FOR DEFENDANT

I, Lyndzie Ann VanGrup, the above named defendant, have read the above order and know the contents thereof and I hereby agree to comply with the conditions as set forth therein.


Lyndzie Ann VanGrup
Defendant

ORDER OF CONTINUANCE

This matter is continued by the Court until further order.


JUDGE of the 14th Judicial District
of the State of Kansas

Gregory T Benefiel, #22484
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: gregorybenefiel@gmail.com

FILED

2015 FEB -5 PM 4:27

DEAN L. JAMES
CLERK OF DISTRICT COURT
MONTGOMERY CO. KS

BY _____

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 2015-CR 62 I(C)

Abigahil Dominguez-Ortiz,

1412 W. 7th St
Coffeyville, KS 67337

Defendant.

AGENCY: Coffeyville Police Department #14-10628

COMPLAINT / INFORMATION

COMES NOW the State of Kansas, by and through Gregory T Benefiel, duly qualified and acting Montgomery County Assistant County Attorney, for and on behalf of the State of Kansas alleges and states for its *Complaint/Information* against the defendant, **Abigahil Dominguez-Ortiz**:

COUNT I

Theft – Value \$1,000 to \$25,000

That on or about the 9th day of July, 2014 and the 31st day of October, 2014, in Montgomery County, Kansas, Abigahil Dominguez-Ortiz did unlawfully and feloniously obtain or exert unauthorized control over property or services worth at least \$1,000.00 but less than \$25,000.00, to-wit: U.S. Currency, with the intent to permanently deprive the owner, to-wit: Save-A-Lot, of the possession, use or benefit of such property or services, all in violation of K.S.A. 21-5801(a)(1). Theft, a severity level 9 nonperson felony. (Penalty: From a minimum of 5 months to a maximum of 17 months in prison and a fine of up to \$100,000; Postrelease supervision term of 12 months. K.S.A. 21-6804 and K.S.A. 21-6611.)

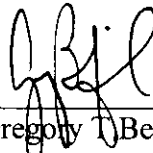
All of the said acts then and there committed being contrary to the statutes in such cases made and provided and being against the peace and dignity of the State of Kansas.

State v. Abigahil Dominguez-Ortiz
2015-TC-78 I(C)

Complaint/Information
Page 1 of 2

WITNESSES:

Justin Hanigan
Save-A-Lot
James Kendall Callahan

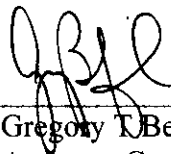


Gregory T Benefiel, #22484
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: gregorybenefiel@gmail.com

VERIFICATION

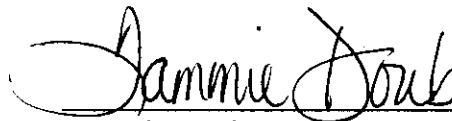
STATE OF KANSAS)
) ss.
COUNTY OF MONTGOMERY)

Gregory T Benefiel, duly qualified and acting Assistant County Attorney, authorized and empowered to prosecute for and on behalf of the State of Kansas, Montgomery County, of lawful age, being first duly sworn on oath deposes and states that the matters and things set forth and contained in the above and foregoing *Complaint/Information* are true and correct as informed and to the best of my knowledge and belief, so help me God.



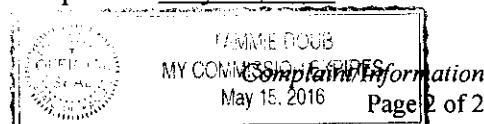
Gregory T Benefiel, #22484
Assistant County Attorney

Subscribed and sworn to before me this 5th day of February, 2015.



Tammie Doub
Notary Public
My term expires: May 15, 2016

State v. Abigahil Dominguez-Ortiz
2015-TC-78 I(C)



Gregory T Benefiel, #22484
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: gregorybenefiel@gmail.com

FILED

2015 JUL 15 PM 12:42

CLERK OF DISTRICT COURT
MONTGOMERY COUNTY, KS

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 2015-CR-000062-I-FE

Abigahil Dominguez-Ortiz,

1913 W. 7th

Coffeyville, KS 67337

White/female; DOB: XX/XX/1993

Defendant.

DIVERSION AGREEMENT

This diversion agreement is entered into on this 14th day of July, 2015, by the above-captioned parties with the approval of their attorneys, if any, and shall continue in force and effect for a term of 12 months.

1. I, the Defendant, fully understand and agree to the following:

a. ADD My full name is Abigahil Luker.

b. ADD My full name at the time the information or complaint in this case was filed was:

Abigahil Dominguez Ortiz

c. ADD I have been charged with the following crime(s), filed in the District Court of Montgomery County, Kansas, via *Complaint* or *Complaint/Information* on 2/5/2015:

State v. Abigahil Dominguez-Ortiz

Diversion Agreement

2015-CR-000062-I-FE

Page 1 of 5

Ex. 8-017

Count 1

Theft of property or services; Value \$1,000 to \$25,000

- d. ADD I have the right to demand a prompt, full and complete evidentiary hearing and trial in this matter.
- e. ADD I have been advised of the right to counsel and given ample time to consult with an attorney before entering this agreement and, if choosing to represent myself, am voluntarily waiving the right to have an attorney represent me concerning this agreement.
- f. ADD The prosecution of this matter is being deferred pursuant to K.S.A. 22-2906, *et seq.*, and the policies and guidelines of the County Attorney, which have been provided to me in writing and which I have been given ample time to read.
- g. ADD I understand that diversions of certain crimes may be used to enhance the severity level of certain crimes if I am charged with them in the future.
- h. ADD I understand that if I am not a citizen of the United States a diversion or conviction for a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.
- i. ADD I understand that I may be eligible for expungement of this diversion pursuant to K.S.A. 21-6614, and amendments thereto.
2. I, the Defendant, agree to do each of the following things:
- a. ADD I waive all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment.
- b. ADD I waive all rights under the law or the constitution of Kansas or of the United States to preliminary examinations and hearings.
- c. ADD I waive all rights under the law or the constitution of Kansas or of the United States to a speedy trial.
- d. ADD I waive all rights under the law or the constitution of Kansas or of the United States to a trial by jury.
- e. ADD I agree not to violate the laws of the United States, of any State, or of any political subdivision of any State during the term of this diversion agreement. Traffic infractions shall not be considered violations of the law.

f. ADD I agree to notify my attorney and the County Attorney in writing within seven (7) days of any change in address, telephone number or place of employment and not to move from the State without the prior approval of the County Attorney's Office. Any mail addressed to me at my last known address returned to the County Attorney's Office or to the District Court as not deliverable, no forwarding address on file, etc., will be considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.

g. ADD I stipulate that I am the individual named in the Information, and that the offense(s) charged occurred in Montgomery County, Kansas. I agree that the facts as set forth in *Addendum A Stipulation of Facts* are true and accurate. I further stipulate to the facts as contained in the official report by:

Coffeyville Police Department, Report Number: 14-10628 ,
written witness statements, and any lab or other test results prepared or taken in connection with this case as being true and accurate. I am agreeing to and waiving my right to require the State to call witnesses to testify, and that I am waiving my rights under the law or the constitution of Kansas or of the United States to confront those witnesses or to call witnesses to testify on my behalf.

h. ADD I agree and understand that violation of the terms and conditions of this agreement will result in revocation of diversion and this matter proceeding to trial based solely upon the *Complaint* or *Complaint/Information*, *Addendum A Stipulation of Facts*, official reports identified above, written witness statements, lab or other test results, and any other evidence associated with this case. I stipulate that the previously described items shall be admitted into evidence without objection by me and without further foundation. I further stipulate that any trial on this matter and any proceedings on appeal shall be conducted solely on the stipulations contained herein, and that I will not be entitled to present additional evidence at the trial of the matter or any proceedings on appeal.

i. ADD I agree to pay as follows:

Payment of Diversion cost - All Payments must be submitted to the Clerk of the Montgomery County District Court; the Court accepts cash, money orders or cashier's checks.

I shall pay the diversion cost in the amount of \$200.00, the court costs in the amount of \$193.00, and fingerprint fee in the amount of \$45.00 for a total of **\$438.00 at the time of signing the diversion agreement. The diversion agreement will not be processed until all monies due are paid into the District Court.**

Any cash bond posted by me shall be applied to the balance due. The cash bond cannot be used to pay the diversion cost or court costs. Any remaining cash bond, after being applied to amounts due, will be returned to me.

j. ADD I acknowledge and understand that if this diversion is revoked, the criminal proceedings on the original charge(s) will be resumed and the clauses waiving all rights to a speedy trial, all rights to preliminary examinations and hearings, and all rights to a trial by jury, will remain in effect. I acknowledge and understand that *Addendum A Stipulation of Facts* and all stipulations set forth in paragraphs 2(h) and 2(i) will remain in effect. I acknowledge and understand that if the Court finds me guilty, the Court may impose any and all fines and/or incarceration as allowed by law for the original charge(s).

k. ADD I agree that the County Attorney's Office shall have thirty (30) days following expiration of this diversion to discover violations of this diversion and to proceed thereon.

l. ADD **Special Conditions:** I shall pay restitution in eleven (11) equal monthly installments of \$375.41 on or before the 10th of each month following the signing of this diversion agreement. Payments should be made payable to Clerk of the District Court of Montgomery County, 300 East Main, Independence, Kansas, 67301.

3. The State agrees to do each of the following things:

- a. To suspend prosecution of the captioned case so long as the Defendant continues to fulfill the terms and conditions of the diversion agreement.
- b. To dismiss with prejudice and with costs assessed to the Defendant all charges in the captioned case at the end of the diversionary term upon a satisfactory showing that the Defendant has successfully fulfilled the terms of the diversion agreement.

The parties understand that it is the Defendant's responsibility to provide the County Attorney's Office with any documentation required by this agreement.

The parties understand that if a motion to revoke diversion and reinstate prosecution is filed, the motion to revoke diversion and reinstate prosecution and a notice of hearing will be mailed directly to the last address provided by the Defendant. It is the Defendant's responsibility to contact his or her attorney in reference to the motion to revoke diversion and reinstate prosecution.

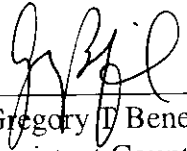
The parties understand and agree that should any section, subsection, sentence, clause, phrase, provision, or exemption of these rules and regulations be declared invalid for any reason, such invalidity shall not affect the remaining portions or provisions contained within the diversion agreement.

By signing this agreement, I, the Defendant, agree, affirm and stipulate that I have read the entire diversion agreement, understand all of its terms and their meaning, including the rights I am

waiving and the obligations I am assuming, and that my decision to enter this agreement is my own free and voluntary act.

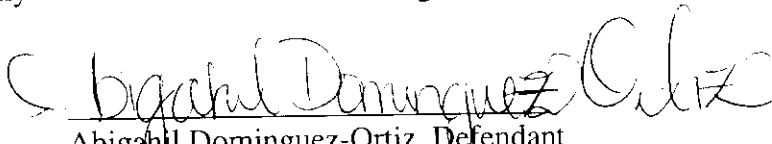
Dated this 14 day of July 2015.

By: State of Kansas, by



Gregory T. Benefiel, #22484
Assistant County Attorney
Montgomery County Attorney's Office
111 E. 11th Street Unit 100
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230

I have read this diversion agreement, fully understand its contents, and agree to its provisions.




Abigahil Dominguez-Ortiz, Defendant

Current Address: 2314 Crawford Ave
Parsons, KS 67357

Telephone: (620) 515-3404

Approved by:



Bruce E. Borders
200 Arco Place, Suite 401
P.O. Box 908
Independence, Kansas, 67301
ATTORNEY FOR DEFENDANT

FILED

IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS DEC 17 PM 3:31

STATE OF KANSAS

Plaintiff

NANCY J. WILLIAMS
CLERK OF DISTRICT COURT
MONTGOMERY CO. KS

VS.

Case No. 13CR5147

CLINTON RENE GOULDNER

Defendant

Wichita, KS 67216

White/male HAIR: Blonde EYE: Blue

HGT: 600 WGT: 215

AGENCY: Independence Police Department

AGENCY CASE NUMBER: 13002369

COMPLAINT / INFORMATION

Ruth A Ritthaler, Assistant County Attorney, for complaint and information against the above shown defendant, alleges and states:

COUNT I-UNLAWFUL TO POSSESS TOOL TO REMOVE THEFT DETECTION DEVICE

That on or about the 29th day of October, 2013, in Montgomery County, Kansas, Clinton Rene Gouldner, then and there being present did unlawfully and feloniously possess any tool or device designed to allow the removal of any theft detection device from any merchandise with the intent to use such tool to remove any theft detection device from any merchandise without the permission of the merchant or person owning or holding such merchandise. In violation of K.S.A. 2011 Supp. 21-5805(c), Possession of Theft Detection Device Remover, a severity level 9 nonperson felony. (Penalty: from a minimum of 5 months to a maximum of 17 months in prison and a fine of up to \$100,000; Postrelease supervision term of 12 months)

COUNT II-THEFT OF PROPERTY OR SERVICES; VALUE LESS THAN \$1,000


That on or about the 29th day of October, 2013, in Montgomery County, Kansas, Clinton Rene Gouldner, then and there being present did unlawfully obtain or exert unauthorized control over property or services worth less than \$1,000.00, to-wit: video game, chicken; with the intent to permanently deprive the owner, to-wit: Wal-Mart-Independence; of the possession, use or benefit of such property or services. In violation of K.S.A. 2011 Supp. 21-5801(a)(1) & (b)(4), Theft, a class A nonperson misdemeanor. (Maximum penalty: one year in county jail and a fine of up to \$2500)

WITNESSES:

Michael Grimes,

☐ County Attorney Copy☐ Defense Copy☐ Defendant Copy

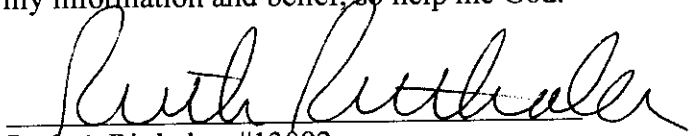
Dustin Taylor,
Wal-Mart-Independence,
Donald R Fuqua,
Doug Redd,



Ruth A Ritthaler, #13092
Assistant County Attorney
ATTORNEY FOR PLAINTIFF

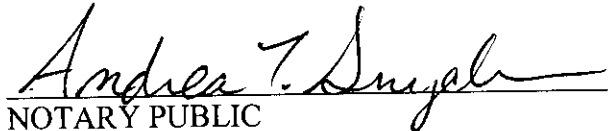
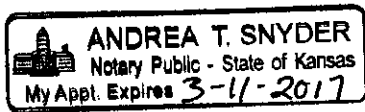
STATE OF KANSAS, COUNTY OF MONTGOMERY, ss:

I, Ruth A Ritthaler, do solemnly swear, that the matters set forth in the within
complaint/information are true to the best of my information and belief, so help me God.



Ruth A Ritthaler, #13092
Assistant County Attorney

Subscribed and sworn to before me this 4th day of December 2013.


NOTARY PUBLIC

My Commission Expires: 3-11-2017

FILED

IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS
2014 FEB 25 PM 2:10
SITTING AT INDEPENDENCE

STATE OF KANSAS, ^{NANCY J. WILLIAMS}
CLERK OF DISTRICT COURT
MONTGOMERY CO. KS

Plaintiff,

BY _____

vs.

No. 2013-CR-000594-I-FE

Clinton Rene Gouldner,

Defendant.

DIVERSION AGREEMENT
PRE-TRIAL RELEASE AND GENERAL CONTINUANCE ORDER

NOW on this 25th day of February, 2014, the defendant appears by his attorney E.Jay Greeno. The State appears by Ruth A Ritthaler, Assistant County Attorney. By joint agreement, the State agrees to place the defendant on diversion of prosecution and the defendant agrees to continue the case for a period of six (6) months.

THE COURT, being fully advised in the premises, finds that the defendant was charged on the 4th day of December, 2013, with the offenses of Unlawful possession of a tool to remove theft detection device as defined in K.S.A. 21-5805 (c), and Theft of property or services; Value less than \$1,000 as defined in K.S.A. 21-5801 (a) (1) (B4) and these charges is in full force and effect. THE COURT FURTHER FINDS THAT:

1. The defendant is a white male, his date of birth is xx/xx/1995, and his Social Security number is xxx-xx-6904.

2. Upon advice of counsel, the defendant has voluntarily waived his right to speedy arraignment and to a speedy trial.

3. The defendant stipulates to the factual basis for the charge(s) as set forth in the affidavit of probable cause and in

the police reports. If this agreement is revoked and he proceeds to trial, the evidence admitted shall consist of the factual basis as set forth above, and the defendant agrees not to present additional evidence on his own behalf.

4. The defendant understands that the State must prove him guilty beyond a reasonable doubt and that he has a right to trial, and with advice of counsel he knowingly waives his right to jury trial.

5. The defendant understands that during the period of diversion of prosecution, the charges pending against him will remain in full force and effect and that the said matter may be set for trial prior to the end of the diversion period upon termination of the agreement by any party to this agreement. 6. That upon successful completion of the diversion period, the complaint will be dismissed with prejudice by the State of Kansas.

IT IS THEREFORE BY THE COURT ORDERED that said defendant be, and is hereby, released pending trial or disposition for a period of six (6) months, conditioned upon the successful completion of the diversionary program and upon the following conditions, to-wit:

1. That he refrains from violating any of the laws of the United States or of any state, or ordinances of any city or town. 2. That he report to this office or any other person, at any time that he may be requested to do so by this office.

3. That he conduct himself at all times as a law abiding citizen and that he shall report any contacts with law enforcement i.e. (traffic citations, arrests or convictions) to the office of the county attorney within 48 hours of said contact.

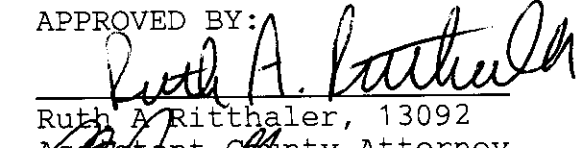
4. That he notify the County Attorney's office of his current address or any change of address.

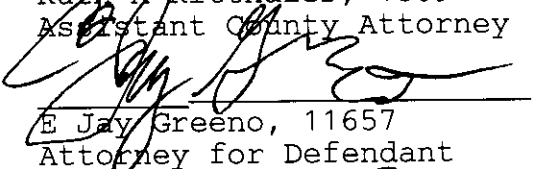
5. That he pay all court costs as follows: Court costs in the amount of \$193, fine of \$100 on Count 1, diversion fee in the amount of \$200, fingerprint fee of \$45.

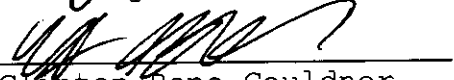
6. Said costs, fines and fees are to be paid at the time of the filing of the Diversion by law firm check or money order made payable to the Clerk of the District Court.

Violation of any of the conditions of this supervision may result in revocation or modification of this diversion program. Defendant will be furnished with notice, at his last known address as shown in our files from his most recent reporting document, specifying the conditions of the program which he has violated. The County Attorney may release him from supervision at any time. The Court or the defendant hereby reserves the right to terminate this agreement for cause at any time prior to the successful completion of the term of the diversion program and demand the matter be set immediately for trial.


APPROVED BY:


Ruth A. Ritthaler, 13092
Assistant County Attorney


E Jay Greeno, 11657
Attorney for Defendant


Clinton Rene Gouldner
Defendant

I, Clinton Rene Gouldner, the above named defendant, have read the above order and know the contents thereof and I hereby agree to comply with the conditions as set forth therein.


Clinton Rene Gouldner
Defendant

ORDER OF CONTINUANCE

This matter is continued by the Court until further order.


JUDGE of the 14th Judicial District

of the State of Kansas

FILED

IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KS

2012 AUG -3 AM 11:49

STATE OF KANSAS

Plaintiff

VS.

Case No. 12 CR 419 I(C) *an*

NANCY J. WILLIAMS
CLERK OF DISTRICT COURT
MONTGOMERY CO. KS

NORMA JEAN ROBERTS

Defendant

4012 Chase Rd.

Coffeyville, KS 67337

White/female HAIR: Gray EYE: Blue

HGT: 506 WGT: 187

AGENCY: Coffeyville Police Department

AGENCY CASE NUMBER: 12-5119

COMPLAINT / INFORMATION

Larry Markle, County Attorney, for complaint and information against the above shown defendant, alleges and states:

COUNT I-BURGLARY; VEHICLE/OTHER MEANS OF CONVEYANCE TO COMMIT FEL, THEFT OR SEX BATTERY

That on or about the 5th day of June, 2012, in Montgomery County, Kansas, Norma Jean Roberts, then and there being present did knowingly and without authority enter into, or remain within, a vehicle or other means of conveyance or persons or property, to-wit: Pickup, belonging to Kenneth J Roberts, with the intent to commit a theft therein, in violation of K.S.A. 21-5807(a)(3), Vehicle Burglary.

Severity Level 9 Nonperson Felony. 5 to 17 months. \$100,000 Fine

COUNT II-THEFT OF PROPERTY OR SERVICES; VALUE LESS THAN \$1,000

That on or about the 5th day of June, 2012, in Montgomery County, Kansas, Norma Jean Roberts, then and there being present did obtain or exert unauthorized control over property worth less than \$1,000.00, to-wit: Bank statement to Kenny Roberts; with the intent to permanently deprive the owner, to-wit: Kenneth J Roberts; of the possession, use or benefit of such property, in violation of K.S.A. 21-5801(a)(1) and K.S.A. 21-5801(b)(4). Misdemeanor Theft.

Class A Nonperson Misdemeanor. 12 Months. \$2,500 Fine

[] County Attorney Copy [] Defense Copy [] Defendant Copy

WITNESSES:

Steve Gilfillan,
Danny Grigg,
Mark McCleary II,
Ed Rutherford,
Sheryl Church,
Mary Beth Flood,
Jennifer Foraker,
Kenneth J Roberts,



Larry Markle, #12345
County Attorney
ATTORNEY FOR PLAINTIFF


STATE OF KANSAS, COUNTY OF MONTGOMERY, ss:

I, Larry Markle, do solemnly swear, that the matters set forth in the within complaint/information are true to the best of my information and belief, so help me God.



Larry Markle, #12345
County Attorney

Subscribed and sworn to before me this 25th day of July 2012.


NOTARY PUBLIC

My Commission Expires:



[] County Attorney Copy [] Defense Copy [] Defendant Copy

Dale T. Callahan, #27109
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: dalecallahan11@gmail.com

FILED

2016 MAY 23 AM 11:04

CLERK OF DISTRICT COURT
MONTGOMERY COUNTY, KANSAS

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,
Plaintiff,

vs.

Case No. 2012-CR-000419-I-FE

Norma Jean Roberts,
4012 Chase Rd.
Coffeyville, KS 67337
White/female; DOB: XX/XX/1958
Defendant.

DIVERSION AGREEMENT

This diversion agreement is entered into on this 23rd day of May, 2016, by the above-captioned parties with the approval of their attorneys, if any, and shall continue in force and effect for a term of 12 months.

1. I, the Defendant, fully understand and agree to the following:

- a. ☒ My full name is Norma Jean Roberts.
- b. ☒ My full name at the time the information or complaint in this case was filed was:
Same
- c. ☒ I have been charged with the following crime(s), filed in the District Court of Montgomery County, Kansas, via *Complaint* or *Complaint/Information* on 7/25/2012:

Count 1

Burglary; Vehicle/other means of conveyance to commit fel, theft or sex battery

Count 2

Theft of property or services; Value less than \$1,000

- d. ☒ I have the right to demand a prompt, full and complete evidentiary hearing and trial in this matter.
 - e. ☒ I have been advised of the right to counsel and given ample time to consult with an attorney before entering this agreement and, if choosing to represent myself, am voluntarily waiving the right to have an attorney represent me concerning this agreement.
 - f. ☒ The prosecution of this matter is being deferred pursuant to K.S.A. 22-2906, *et seq.*, and the policies and guidelines of the County Attorney, which have been provided to me in writing and which I have been given ample time to read.
 - g. ☒ I understand that diversions of certain crimes may be used to enhance the severity level of certain crimes if I am charged with them in the future.
 - h. ☒ I understand that if I am not a citizen of the United States a diversion or conviction for a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.
 - i. ☒ I understand that I may be eligible for expungement of this diversion pursuant to K.S.A. 21-6614, and amendments thereto.
2. I, the Defendant, agree to do each of the following things:
- a. ☒ I waive all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment.
 - b. ☒ I waive all rights under the law or the constitution of Kansas or of the United States to preliminary examinations and hearings.
 - c. ☒ I waive all rights under the law or the constitution of Kansas or of the United States to a speedy trial.
 - d. ☒ I waive all rights under the law or the constitution of Kansas or of the United States to a trial by jury.
 - e. ☒ I agree not to violate the laws of the United States, of any State, or of any political subdivision of any State during the term of this diversion agreement. Traffic infractions shall not be considered violations of the law.
 - f. ☒ I agree to notify my attorney and the County Attorney in writing within seven (7) days of any change in address, telephone number or place of employment and not to move from the State without the prior approval of the County Attorney's Office. Any

mail addressed to me at my last known address returned to the County Attorney's Office or to the District Court as not deliverable, no forwarding address on file, etc., will be considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.

- g. ☒ I stipulate that I am the individual named in the Information, and that the offense(s) charged occurred in Montgomery County, Kansas. I agree that the facts as set forth in *Addendum A Stipulation of Facts* are true and accurate. I further stipulate to the facts as contained in the official report by:

Coffeyville Police Department, Report Number: 12-5119 ,
written witness statements, and any lab or other test results prepared or taken in connection with this case as being true and accurate. I am agreeing to and waiving my right to require the State to call witnesses to testify, and that I am waiving my rights under the law or the constitution of Kansas or of the United States to confront those witnesses or to call witnesses to testify on my behalf.

- h. ☒ I agree and understand that violation of the terms and conditions of this agreement will result in revocation of diversion and this matter proceeding to trial based solely upon the *Complaint* or *Complaint/Information*, *Addendum A Stipulation of Facts*, official reports identified above, written witness statements, lab or other test results, and any other evidence associated with this case. I stipulate that the previously described items shall be admitted into evidence without objection by me and without further foundation. I further stipulate that any trial on this matter and any proceedings on appeal shall be conducted solely on the stipulations contained herein, and that I will not be entitled to present additional evidence at the trial of the matter or any proceedings on appeal.

- i. ☒ I agree to pay as follows:

Payment of Diversion cost - All Payments must be submitted to the Clerk of the Montgomery County District Court; the Court accepts cash, money orders or cashier's checks.

I shall pay as follows:

Diversion fee:	\$ 200.00
Court costs:	\$ 193.00
Attorney fees:	\$ 0.00
Fingerprint fee:	\$ 45.00
Total:	\$ 438.00

All costs and fees will be paid at the time of signing the diversion agreement. The diversion agreement will not be processed until all monies due are paid into the District Court.

Any cash bond posted by me shall be applied to the balance due. The cash bond cannot be used to pay the diversion cost or court costs. Any remaining cash bond, after being applied to amounts due, will be returned to me.

j. ☒ I acknowledge and understand that if this diversion is revoked, the criminal proceedings on the original charge(s) will be resumed and the clauses waiving all rights to a speedy trial, all rights to preliminary examinations and hearings, and all rights to a trial by jury, will remain in effect. I acknowledge and understand that *Addendum A Stipulation of Facts* and all stipulations set forth in paragraphs 2(h) and 2(i) will remain in effect. I acknowledge and understand that if the Court finds me guilty, the Court may impose any and all fines and/or incarceration as allowed by law for the original charge(s).

k. ☒ I agree that the County Attorney's Office shall have thirty (30) days following expiration of this diversion to discover violations of this diversion and to proceed thereon.

l. ☒ **Special Conditions: I will not contact Kenneth J. Roberts.**

3. The State agrees to do each of the following things:

- a. To suspend prosecution of the captioned case so long as the Defendant continues to fulfill the terms and conditions of the diversion agreement.
- b. To dismiss with prejudice and with costs assessed to the Defendant all charges in the captioned case at the end of the diversionary term upon a satisfactory showing that the Defendant has successfully fulfilled the terms of the diversion agreement.

The parties understand that it is the Defendant's responsibility to provide the County Attorney's Office with any documentation required by this agreement.

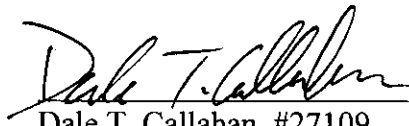
The parties understand that if a motion to revoke diversion and reinstate prosecution is filed, the motion to revoke diversion and reinstate prosecution and a notice of hearing will be mailed directly to the last address provided by the Defendant. It is the Defendant's responsibility to contact his or her attorney in reference to the motion to revoke diversion and reinstate prosecution.

The parties understand and agree that should any section, subsection, sentence, clause, phrase, provision, or exemption of these rules and regulations be declared invalid for any reason, such invalidity shall not affect the remaining portions or provisions contained within the diversion agreement.

By signing this agreement, I, the Defendant, agree, affirm and stipulate that I have read the entire diversion agreement, understand all of its terms and their meaning, including the rights I am waiving and the obligations I am assuming, and that my decision to enter this agreement is my own free and voluntary act.

Dated this 10th day of May, 2016.

By: State of Kansas, by



Dale T. Callahan, #27109
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230

I have read this diversion agreement, fully understand its contents, and agree to its provisions.




Norma Jean Roberts, Defendant

Current Address:

4012 Chase Rd.
Coffeyville, Ks. 67337
(620) 922-3899

Telephone:

Approved by:



William J. Fitzpatrick, #6544
Attorney for Defendant
PO Box 785
INDEPENDENCE, KS 67301
Phone: (620) 331-4710
FAX: (620) 331-5643
Email: wfitzs@sbcglobal.net
ATTORNEY FOR DEFENDANT

Exhibit 9

Timothy J. Grillot, #11415
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: timgrillotaca@gmail.com

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Codi Lynn Marshall,

215 W Elk St
Elk City, KS 67344

Defendant.

AGENCY: Montgomery County Sheriff #18-491

INFORMATION

COMES NOW the State of Kansas, by and through Timothy J. Grillot, duly qualified and acting Montgomery County, Assistant County Attorney, for and on behalf of the State of Kansas alleges and states for its *Information* against the defendant, **Codi Lynn Marshall**:

COUNT I

Aggravated domestic battery; choke in rude manner; family member/dating relationship

That on or about 30th day of March, 2018 and the 31st day of March, 2018, in Montgomery County, Kansas, Codi Lynn Marshall feloniously, unlawfully and knowingly impede the normal breathing or circulation of the blood by applying pressure on the throat, neck or chest of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, as defined in K.S.A. 21-5414(e)(2), to wit: Michael Ray Miller when done in a rude, insulting or angry manner, all in violation of K.S.A. 21-5414(b)(1). Aggravated Domestic Battery, is a Severity Level 7 Person Felony. (Penalty: A sentence ranging from 11 months to 34 months and a fine not to exceed \$100,000. K.S.A. 21-5414, K.S.A. 21-6602, and K.S.A. 21-6611.)

Domestic Violence Designation: There is evidence this offense is a domestic violence offense as provided in K.S.A. 22-4616(a) and K.S.A. 21-5111, and may be subject to the requirements of K.S.A 21-6604(p).

All of the said acts then and there committed being contrary to the statutes in such cases made and provided and being against the peace and dignity of the State of Kansas.

WITNESSES:

Kyle Hand
Matt Hastings
Michael Ray Miller
Sonia Veronika Chacon
Breezy Laforge
Michael Rafael McCorkle
MM (DOB: 4/7/2006)
MM (DOB: 12/27/2004)

/s/ Timothy J. Grillot
Timothy J. Grillot, #11415
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: timgrillotaca@gmail.com

VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF MONTGOMERY)

Timothy J. Grillot, duly qualified and acting Assistant County Attorney, authorized and empowered to prosecute for and on behalf of the State of Kansas, Montgomery County, of lawful age, being first duly sworn on oath deposes and states that the matters and things set forth and contained in the above and foregoing *Information* are true and correct as informed and to the best of my knowledge and belief, so help me God.

/s/ Timothy J. Grillot
Timothy J. Grillot, #11415
Assistant County Attorney

Subscribed and sworn to before me on 4/9/2018.

/s/ Kendall Garton
Notary Public
My term expires: 06/04/2018

Lisa D Montgomery, #18243
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lisamontgomery052013@gmail.com

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 18-CR-146-I

Codi Lynn Marshall,

215 W Elk St

Elk City, KS 67344

W/female; DOB: XX/XX/1988

Defendant.

DIVERSION AGREEMENT

This diversion agreement is entered into on this 29th day of May, 2018, by the above-captioned parties with the approval of their attorneys, if any, and shall continue in force and effect for a term of 12 months.

1. I, the Defendant, fully understand and agree to the following:

- a. CM My full name is Codi Lynn Marshall.
- b. CM My full name at the time the information or complaint in this case was filed was:
Codi Lynn Marshall.
- c. CM I have been charged with the following crime(s), filed in the District Court of Montgomery County, Kansas, via *Complaint* or *Complaint/Information* on 4/9/2018:

Count 1

Battery

- d. CM I have the right to demand a prompt, full and complete evidentiary hearing and trial in this matter.
 - e. CM I have been advised of the right to counsel and given ample time to consult with an attorney before entering this agreement and, if choosing to represent myself, am voluntarily waiving the right to have an attorney represent me concerning this agreement.
 - f. CM The prosecution of this matter is being deferred pursuant to K.S.A. 22-2906, *et seq.*, and the policies and guidelines of the County Attorney, which have been provided to me in writing and which I have been given ample time to read.
 - g. CM I understand that diversions of certain crimes may be used to enhance the severity level of certain crimes if I am charged with them in the future.
 - h. CM I understand that if I am not a citizen of the United States a diversion or conviction for a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.
 - i. CM I understand that I may be eligible for expungement of this diversion pursuant to K.S.A. 21-6614, and amendments thereto.
2. I, the Defendant, agree to do each of the following things:
- a. CM I waive all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment.
 - b. CM I waive all rights under the law or the constitution of Kansas or of the United States to preliminary examinations and hearings.
 - c. CM I waive all rights under the law or the constitution of Kansas or of the United States to a speedy trial.
 - d. CM I waive all rights under the law or the constitution of Kansas or of the United States to a trial by jury.
 - e. CM I agree not to violate the laws of the United States, of any State, or of any political subdivision of any State during the term of this diversion agreement. Traffic infractions shall not be considered violations of the law.
 - f. CM I agree to notify my attorney and the County Attorney in writing within seven (7) days of any change in address, telephone number or place of employment and not to move from the State without the prior approval of the County Attorney's Office. Any

mail addressed to me at my last known address returned to the County Attorney's Office or to the District Court as not deliverable, no forwarding address on file, etc., will be considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.

- g. CM I stipulate that I am the individual named in the Information, and that the offense(s) charged occurred in Montgomery County, Kansas. I agree that the facts as set forth in *Addendum A Stipulation of Facts* are true and accurate. I further stipulate to the facts as contained in the official report by:

Montgomery County Sheriff, Report Number: 18-491 ,
written witness statements, and any lab or other test results prepared or taken in connection with this case as being true and accurate. I am agreeing to and waiving my right to require the State to call witnesses to testify, and that I am waiving my rights under the law or the constitution of Kansas or of the United States to confront those witnesses or to call witnesses to testify on my behalf.

- h. CM I agree and understand that violation of the terms and conditions of this agreement will result in revocation of diversion and this matter proceeding to trial based solely upon the *Complaint* or *Complaint/Information*, *Addendum A Stipulation of Facts*, official reports identified above, written witness statements, lab or other test results, and any other evidence associated with this case. I stipulate that the previously described items shall be admitted into evidence without objection by me and without further foundation. I further stipulate that any trial on this matter and any proceedings on appeal shall be conducted solely on the stipulations contained herein, and that I will not be entitled to present additional evidence at the trial of the matter or any proceedings on appeal.

- i. CM I agree to pay as follows:

Payment of Diversion cost - All Payments must be submitted to the Clerk of the Montgomery County District Court; the Court accepts cash, money orders or cashier's checks.

I shall pay as follows:

Diversion fee:	\$300.00
Court costs:	\$158.00
Attorney fees & BIDS:	\$175.00
Fingerprint fee:	\$ 45.00
Total:	\$678.00

Any cash bond posted by me shall be applied to the balance due. The cash bond cannot be used to pay the diversion cost or court costs. Any remaining cash bond, after being applied to amounts due, will be returned to me.

- j. CM I acknowledge and understand that if this diversion is revoked, the criminal proceedings on the original charge(s) will be resumed and the clauses waiving all rights to a speedy trial, all rights to preliminary examinations and hearings, and all rights to a

trial by jury, will remain in effect. I acknowledge and understand that *Addendum A Stipulation of Facts* and all stipulations set forth in paragraphs 2(h) and 2(i) will remain in effect. I acknowledge and understand that if the Court finds me guilty, the Court may impose any and all fines and/or incarceration as allowed by law for the original charge(s).

- k. CM I agree that the County Attorney's Office shall have thirty (30) days following expiration of this diversion to discover violations of this diversion and to proceed thereon.

l. CM **Special Conditions:**

Diversion fines and fees may be paid in three monthly installments of \$226.00. The final installment is due 90 days after the file stamped date of the Diversion Agreement.

3. The State agrees to do each of the following things:

- a. To suspend prosecution of the captioned case so long as the Defendant continues to fulfill the terms and conditions of the diversion agreement.
- b. To dismiss with prejudice and with costs assessed to the Defendant all charges in the captioned case at the end of the diversionary term upon a satisfactory showing that the Defendant has successfully fulfilled the terms of the diversion agreement.

The parties understand that it is the Defendant's responsibility to provide the County Attorney's Office with any documentation required by this agreement.

The parties understand that if a motion to revoke diversion and reinstate prosecution is filed, the motion to revoke diversion and reinstate prosecution and a notice of hearing will be mailed directly to the last address provided by the Defendant. It is the Defendant's responsibility to contact his or her attorney in reference to the motion to revoke diversion and reinstate prosecution.

The parties understand and agree that should any section, subsection, sentence, clause, phrase, provision, or exemption of these rules and regulations be declared invalid for any reason, such invalidity shall not affect the remaining portions or provisions contained within the diversion agreement.

By signing this agreement, I, the Defendant, agree, affirm and stipulate that I have read the entire diversion agreement, understand all of its terms and their meaning, including the rights I am waiving and the obligations I am assuming, and that my decision to enter this agreement is my own free and voluntary act.

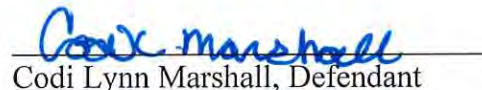
Dated this 29th day of May, 2018.

By: State of Kansas, by



Lisa D Montgomery, #18243
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230

I have read this diversion agreement, fully understand its contents, and agree to its provisions.



Codi Lynn Marshall, Defendant

Current Address:

215 W. Elk

Elk City KS 67344

Telephone:

620-330-6150

Approved by:



Daniel M Reynolds, #24628
Attorney for Defendant
Emert, Chubb & Gettler
Independence, KS 67301
Phone: (620) 331-1800
FAX: (620) 331-1807
Email: dreynolds@sehc-law.com
ATTORNEY FOR DEFENDANT

Gregory T Benefiel, #22484
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: gregorybenefiel@gmail.com

FILED

2014 SEP 16 PM 3:53

DOANNE JAMES
CLERK OF DISTRICT COURT
MONTGOMERY CO. KS

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 14 CR 336 IC

Emily Suzanne Bishop,

402 E 9th
Coffeyville, KS 67337

Defendant.

AGENCY: Coffeyville Police Department #14-8633

COMPLAINT / INFORMATION

COMES NOW the State of Kansas, by and through Gregory T Benefiel, duly qualified and acting Montgomery County Assistant County Attorney, for and on behalf of the State of Kansas alleges and states for its *Complaint/Information* against the defendant, **Emily Suzanne Bishop**:

COUNT I
Aggravated Battery

That on or about the 3rd day of September, 2014, in Montgomery County, Kansas, Emily Suzanne Bishop did unlawfully, feloniously and knowingly cause physical contact in a rude, insulting or angry manner with another person, to wit: Kaylin Dale Darnell, with a deadly weapon, to wit: a knife, or in any manner whereby great bodily harm, disfigurement or death can be inflicted, all in violation of K.S.A. 21-5413(b)(1)(C). Aggravated Battery, a severity level 7 person felony. (Penalty: From a minimum of 11 months to a maximum of 34 months in prison and a fine of up to \$100,000; Postrelease supervision term of 12 months. K.S.A. 21-6804 and K.S.A. 21-6611.)

All of the said acts then and there committed being contrary to the statutes in such cases made and provided and being against the peace and dignity of the State of Kansas.

State v. Emily Suzanne Bishop [] County Attorney Copy [] Defense Copy [] Defendant Copy
2014-TC-372 I(C) *Complaint/Information* Page 1

Ex. 9-008

WITNESSES:

Darin Daily
Thomas Darbro
Christopher McGowan
Cody Rexwinkle
Kaylin Dale Darnell
Travis Gene Cox
James Lee Helkenberg

Kaitlyn Ann Marie McIntire
Donovan Conan North
Ashley Constance Smith
Johnathan Lee Thomasson
Chris Tice
Tracey Lynn Wright

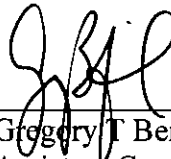


Gregory T Benefiel, #22484
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: gregorybenefiel@gmail.com

VERIFICATION

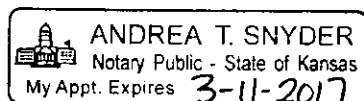
STATE OF KANSAS)
) ss.
COUNTY OF MONTGOMERY)

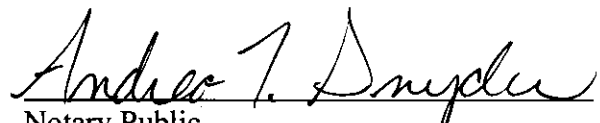
Gregory T Benefiel, duly qualified and acting Assistant County Attorney, authorized and empowered to prosecute for and on behalf of the State of Kansas, Montgomery County, of lawful age, being first duly sworn on oath deposes and states that the matters and things set forth and contained in the above and foregoing *Complaint/Information* are true and correct as informed and to the best of my knowledge and belief, so help me God.



Gregory T Benefiel, #22484
Assistant County Attorney

Subscribed and sworn to before me this 16th day of September, 2014.





Notary Public
My term expires: 3-11-2017

Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com

FILED
2015 JUL -1 AM 11:14
CLERK OF DISTRICT COURT
MONTGOMERY COUNTY, KANSAS

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,
Plaintiff,

vs.

Case No. 2014-CR-000336-I-FE

Emily Suzanne Bishop,
402 E 9th
Coffeyville, KS 67337
White/female; DOB: XX/XX/1991
Defendant.

DIVERSION AGREEMENT

This diversion agreement is entered into on this 29 day of March, 2015, by the above-captioned parties with the approval of their attorneys, if any, and shall continue in force and effect for a term of 12 months.

1. I, the Defendant, fully understand and agree to the following:

- a. EB My full name is Emily Suzanne Bishop.
- b. EB My full name at the time the information or complaint in this case was filed was:
Emily Suzanne Bishop.
- c. EB I have been charged with the following crime(s), filed in the District Court of Montgomery County, Kansas, via *Complaint* or *Complaint/Information* on 9/16/2014:

Count 1

Aggravated battery; Intentional physical contact with a deadly weapon

- d. EB I have the right to demand a prompt, full and complete evidentiary hearing and trial in this matter.
 - e. EB I have been advised of the right to counsel and given ample time to consult with an attorney before entering this agreement and, if choosing to represent myself, am voluntarily waiving the right to have an attorney represent me concerning this agreement.
 - f. EB The prosecution of this matter is being deferred pursuant to K.S.A. 22-2906, *et seq.*, and the policies and guidelines of the County Attorney, which have been provided to me in writing and which I have been given ample time to read.
 - g. EB I understand that diversions of certain crimes may be used to enhance the severity level of certain crimes if I am charged with them in the future.
 - h. EB I understand that if I am not a citizen of the United States a diversion or conviction for a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.
 - i. EB I understand that I may be eligible for expungement of this diversion pursuant to K.S.A. 21-6614, and amendments thereto.
2. I, the Defendant, agree to do each of the following things:
- a. EB I waive all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment.
 - b. EB I waive all rights under the law or the constitution of Kansas or of the United States to preliminary examinations and hearings.
 - c. EB I waive all rights under the law or the constitution of Kansas or of the United States to a speedy trial.
 - d. EB I waive all rights under the law or the constitution of Kansas or of the United States to a trial by jury.
 - e. EB I agree not to violate the laws of the United States, of any State, or of any political subdivision of any State during the term of this diversion agreement. Traffic infractions shall not be considered violations of the law.
 - f. EB I agree to notify my attorney and the County Attorney in writing within seven (7) days of any change in address, telephone number or place of employment and not to move from the State without the prior approval of the County Attorney's Office. Any mail addressed to me at my last known address returned to the County Attorney's Office

or to the District Court as not deliverable, no forwarding address on file, etc., will be considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.

- g. EB I stipulate that I am the individual named in the Information, and that the offense(s) charged occurred in Montgomery County, Kansas. I agree that the facts as set forth in *Addendum A Stipulation of Facts* are true and accurate. I further stipulate to the facts as contained in the official report by:

Coffeyville Police Department, Report Number: 14-8633 ,
written witness statements, and any lab or other test results prepared or taken in connection with this case as being true and accurate. I am agreeing to and waiving my right to require the State to call witnesses to testify, and that I am waiving my rights under the law or the constitution of Kansas or of the United States to confront those witnesses or to call witnesses to testify on my behalf.

- h. EB I agree and understand that violation of the terms and conditions of this agreement will result in revocation of diversion and this matter proceeding to trial based solely upon the *Complaint* or *Complaint/Information*, *Addendum A Stipulation of Facts*, official reports identified above, written witness statements, lab or other test results, and any other evidence associated with this case. I stipulate that the previously described items shall be admitted into evidence without objection by me and without further foundation. I further stipulate that any trial on this matter and any proceedings on appeal shall be conducted solely on the stipulations contained herein, and that I will not be entitled to present additional evidence at the trial of the matter or any proceedings on appeal.

- i. EB I agree to pay as follows:

The diversion agreement will not be processed until the court costs are paid.

Total:	
Court Costs:	\$ 193.00
Diversion Fee:	\$ 200.00
Fingerprinting fee:	<u>\$ 45.00</u>
Balance Due	\$ 438.00

Any cash bond posted by me shall be applied to the balance due. The cash bond cannot be used to pay the diversion cost or court costs. Any remaining cash bond, after being applied to amounts due, will be returned to me.

- j. EB I acknowledge and understand that if this diversion is revoked, the criminal proceedings on the original charge(s) will be resumed and the clauses waiving all rights

to a speedy trial, all rights to preliminary examinations and hearings, and all rights to a trial by jury, will remain in effect. I acknowledge and understand that *Addendum A Stipulation of Facts* and all stipulations set forth in paragraphs 2(h) and 2(i) will remain in effect. I acknowledge and understand that if the Court finds me guilty, the Court may impose any and all fines and/or incarceration as allowed by law for the original charge(s).

k. EB I agree that the County Attorney's Office shall have thirty (30) days following expiration of this diversion to discover violations of this diversion and to proceed thereon.

l. EB **Special Conditions: Ordered to attended Non-Violence Course**
Must pay 1/2 hospital bill \$2,208.60

3. The State agrees to do each of the following things:

- a. To suspend prosecution of the captioned case so long as the Defendant continues to fulfill the terms and conditions of the diversion agreement.
- b. To dismiss with prejudice and with costs assessed to the Defendant all charges in the captioned case at the end of the diversionary term upon a satisfactory showing that the Defendant has successfully fulfilled the terms of the diversion agreement.

The parties understand that it is the Defendant's responsibility to provide the County Attorney's Office with any documentation required by this agreement.

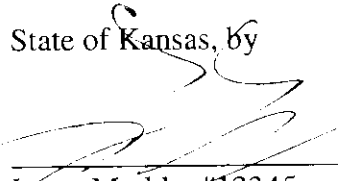
The parties understand that if a motion to revoke diversion and reinstate prosecution is filed, the motion to revoke diversion and reinstate prosecution and a notice of hearing will be mailed directly to the last address provided by the Defendant. It is the Defendant's responsibility to contact his or her attorney in reference to the motion to revoke diversion and reinstate prosecution.

The parties understand and agree that should any section, subsection, sentence, clause, phrase, provision, or exemption of these rules and regulations be declared invalid for any reason, such invalidity shall not affect the remaining portions or provisions contained within the diversion agreement.

By signing this agreement, I, the Defendant, agree, affirm and stipulate that I have read the entire diversion agreement, understand all of its terms and their meaning, including the rights I am waiving and the obligations I am assuming, and that my decision to enter this agreement is my own free and voluntary act.

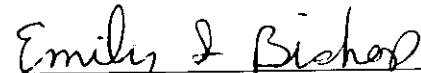
Dated this _____ day of _____, 2015.

By: State of Kansas, by



Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
111 E. 11th Street Unit 100
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230

I have read this diversion agreement, fully understand its contents, and agree to its provisions.



Emily Suzanne Bishop, Defendant

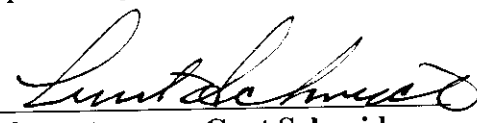
Current Address:

402 E 9th
Coffeyville, KS

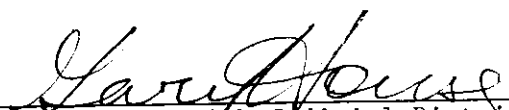
Telephone:

620-515-1463

Approved by:



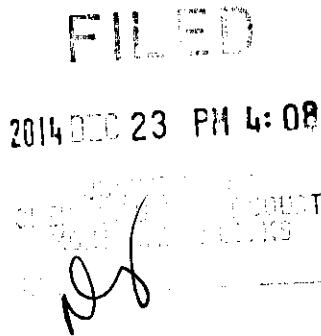
Defense Attorney **Curt Schneider**
Defense Attorney Address **P.O. Box 562**
Defense Attorney Phone **620-251-6530**
ATTORNEY FOR DEFENDANT



Judge of the 14th Judicial District
Montgomery County Kansas

Review Date: May 28, 2015 9 AM

Ruth A Ritthaler, #13092
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: RuthRitthaler@yahoo.com



**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,
Plaintiff,

vs.

Gordon Eric Shaffer,
3246 CR 4100
Independence, KS 67301
Defendant.

Case No. 14CR473J

AGENCY: Montgomery County Sheriff #14-1738

COMPLAINT / INFORMATION

COMES NOW the State of Kansas, by and through Ruth A Ritthaler, duly qualified and acting Montgomery County Assistant County Attorney, for and on behalf of the State of Kansas alleges and states for its *Complaint/Information* against the defendant, **Gordon Eric Shaffer:**

COUNT I

Aggravated assault; Use of a deadly weapon

That on or about the 30th day of November, 2014, in Montgomery County, Kansas, Gordon Eric Shaffer, then and there being present did unlawfully, feloniously, and knowingly place Larry Henry in reasonable apprehension of immediate bodily harm with a deadly weapon, to wit: tractor. In violation of K.S.A. 2011 Supp. 21-5412(b)(1), Aggravated Assault, a severity level 7 person felony. (Penalty: from a minimum of 11 months to a maximum of 34 months in prison and a fine of up to \$100,000; Postrelease supervision term of 12 months)

All of the said acts then and there committed being contrary to the statutes in such cases made and provided and being against the peace and dignity of the State of Kansas.

Michael Grimes
Larry Henry
Tyler Henry

Arch A. Littlejohn

Ruth A Ritthaler, #13092
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: RuthRitthaler@yahoo.com

STATE OF KANSAS)
) ss.
COUNTY OF MONTGOMERY)

Ruth A Ritthaler, duly qualified and acting Assistant County Attorney, authorized and empowered to prosecute for and on behalf of the State of Kansas, Montgomery County, of lawful age, being first duly sworn on oath deposes and states that the matters and things set forth and contained in the above and foregoing *Complaint/Information* are true and correct as informed and to the best of my knowledge and belief, so help me God.

Ruth A. Pittsley

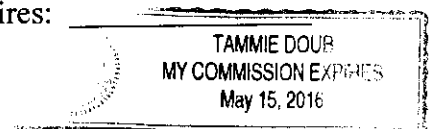
Ruth A Ritthaler, #13092
Assistant County Attorney

Subscribed and sworn to before me this 22nd day of December, 2014.

Jammie Doud

Notary Public

My term expires:



State v. Gordon Eric Shaffer
2014-TC-000528-I-

☐ County Attorney Copy ☐ Defense Copy ☐ Defendant Copy
Complaint/Information Page 2

IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS
Sitting at Independence

STATE OF KANSAS

Plaintiff

vs.

Case No. 14 CR-473 I

GORDON ERIC SHAFFER

Defendant

DIVERSION AGREEMENT

THE PARTIES TO THE AGREEMENT ARE:

1. The State appears by Larry Markle, County Attorney.
2. The defendant, Gordon Eric Shaffer, is a Caucasian male, his year of birth is 1954, and his Social Security number is XXX-XX-9458.
3. The defendant's attorney is Bruce E. Borders.

CHARGES AND FACTS: The defendant stipulates to the basis for the charge in that:

1. The State based on allegations of probable cause charges defendant with Aggravated Assault with a Deadly Weapon against Larry Henry on or about November 30, 2014.
2. The defendant denies the alleged crime.

STIPULATIONS AND WAIVERS:

1. The defendant has voluntarily waived his right to a speedy trial.
2. The defendant understands that the State must prove him guilty beyond a reasonable doubt and that he has a right to trial. The defendant further understands and agrees that should this Agreement be revoked for any reason that this matter shall proceed to trial.
3. The defendant understands that during the period of diversion of prosecution, the charges pending against him will remain in full force and effect and that the said matter may be set for jury trial prior to the end of the diversion period upon termination of the agreement by any party to this agreement.

4. The defendant understands that, if the defendant fails to fulfill the terms of the specific diversion agreement, the criminal proceedings shall resume on the complaint.
5. The defendant understands that upon successful completion of the diversion period, the complaint will be dismissed with prejudice by the State of Kansas.

CONDITIONS OF RELEASE: It is therefore agreed that said defendant be, and is hereby released pending trial or disposition for a period of Twelve (12) months, conditioned upon the successful completion of the diversionary program and upon the following conditions, to-wit:

1. That he refrains from violating any of the laws of the United States or of any state, or ordinances of any city or town.
2. That he report to the County Attorney's office or any other person, at any time, that he may be requested to do so by the County Attorney's office.
3. That he conducts himself at all times as a law-abiding citizen.
4. That he notify the County Attorney's office of his current address or any change of address.
5. That he not come on the property of the alleged victim in this case.
6. Further, that in the event of the Defendant's violation of this Agreement, the County Attorney may:
 - a. Ask the Court to revoke this Agreement and reinstate this case on the Trial docket for further prosecution;
 - b. Notify the defendant at the address in this Agreement or at the last known address in the County Attorney's file;
 - c. Notify the defendant's attorney at the address in this Agreement or at the last known address in the County Attorney's file; and
 - d. Specify the conditions of your program that you have violated.

7. That at the time of filing of this Agreement he must pay:

- a. Court costs of the action in the amount of \$195.00;
- b. Diversion fee of \$200.00;
- c. Fingerprinting fees to the Clerk of the District Court of \$45.00
- d. Payment equivalent to fine in the amount of \$200.00;

8. Violation of any of the conditions may result in revocation or modification of the diversion program. The County Attorney may release you from supervision at any time.

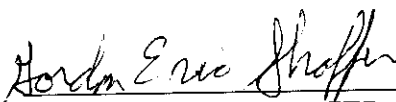
9. The County Attorney or the defendant hereby reserves the right to terminate this agreement for cause at any time prior to the successful completion of the term of the diversion program and demand the matter be set immediately for jury trial.

10. The Defendant and his attorney hereby state that they have read, reviewed and understood this Agreement and will comply with its terms.

APPROVED BY:

APPROVED BY:


LARRY MARKLE #12345
County Attorney


GORDON ERIC SHAFFER
Defendant

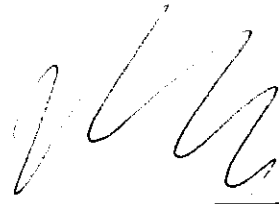

BRUCE E. BORDERS #06930
Attorney for Defendant

Exhibit 10

FILED

IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KS

2013 OCT 25 PM 1:21

STATE OF KANSAS

Plaintiff

NANCY J. WILLIAMS
CLERK OF DISTRICT COURT
MONTGOMERY CO. KS

VS.

Case No. BY

13CR505J

SHEILA HAYS

Defendant

612 S. Ash

Bristow, OK 74010

White/female HAIR: Brown EYE: Green

HGT: 505 WGT: 150

AGENCY: Montgomery County Sheriff

AGENCY CASE NUMBER: 13-1333

COMPLAINT / INFORMATION

Larry Markle, County Attorney, for complaint and information against the above shown defendant, alleges and states:

COUNT I-COMMERCIAL GAMBLING; OPERATING OR RECEIVING ALL EARNINGS

That on or about the 20th day of August, 2013, in Montgomery County, Kansas, Sheila Hays, then and there being did unlawfully, feloniously and knowingly operate or receive all or part of the earnings of a gambling place, a defined in K.S.A. 2011 Supp. 21-6403(e). In violation of K.S.A. 2011 Supp. 21-6406(a)(1)(A), Commercial Gambling, a severity level 8 nonperson felony. (Penalty: from a minimum of 7 months to a maximum of 23 months in prison and a fine of up to \$100,000; Postrelease supervision term of 12 months)

COUNT II-UNLAWFUL POSSESSION OF GAMBLING DEVICE

That on or about the 20th day of August, 2013 and September 11, 2013, in Montgomery County, Kansas, Sheila Hays, then and there being did unlawfully possess a gambling device. In violation of K.S.A. 2011 Supp. 21-6408, Unlawful Possession of a Gambling Device, a class B nonperson misdemeanor. (Maximum penalty: six months in county jail and a fine of up to \$1000)

COUNT III-INTERFERENCE WITH LEO; OBSTRUCT OR RESIST IN FELONY CASE

That on or about, in Montgomery County, Kansas, Sheila Hays, then and there being present did unlawfully, feloniously and knowingly obstruct, resist or oppose Kwin Bromley a person or

☐ County Attorney Copy


☐ Defense Copy

☐ Defendant Copy

persons he/she knew or should have known to be law enforcement officer(s), to wit: Kwin Bromley, and such law enforcement officer(s) is/are authorized by law to perform an official duty, and further that such act of Sheila Hays, to wit: hid bank bags, substantially hindered or increased the burden of Kwin Bromley in the performance of the officer's official duty, and that such act was committed in the case of a felony, or resulting from parole or an authorized disposition for a felony. In violation of K.S.A. 2011 Supp. 21-5904(a)(2) & (b)(2)(A), Interference with Law Enforcement - Obstruction of Official Duty, a severity level 9 nonperson felony. (Penalty: from a minimum of 5 months to a maximum of 17 months in prison and a fine of up to \$100,000; Postrelease supervision term of 12 months)

WITNESSES:

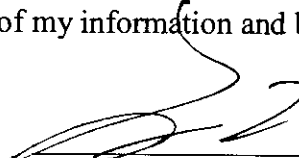
Kwin Bromley,
Joseph Dye,
Chris Williams,
James L. Root,



Larry Markle, #12345
County Attorney
ATTORNEY FOR PLAINTIFF

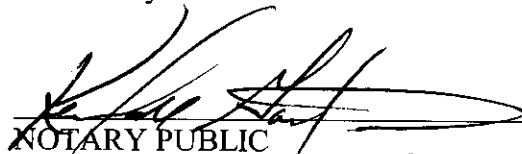
STATE OF KANSAS, COUNTY OF MONTGOMERY, ss:

I, Larry Markle, do solemnly swear, that the matters set forth in the within complaint/information are true to the best of my information and belief, so help me God.

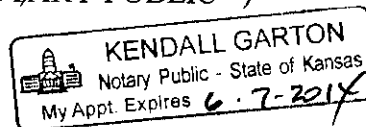


Larry Markle, #12345
County Attorney

Subscribed and sworn to before me this 24th day of October 2013.


NOTARY PUBLIC

My Commission Expires:



☐ County Attorney Copy ☐ Defense Copy ☐ Defendant Copy

Gregory T Benefiel, #22484
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: gregorybenefiel@gmail.com

FILED
2016 JAN 22 AM 9:55
CLERK OF DISTRICT COURT
MONTGOMERY COUNTY, KANSAS

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 2013-CR-505 I(C)

Sheila Hays,

612 S. Ash St.

Bristow, OK 74010

White/Female; DOB: XX/XX/1966

Defendant.

DIVERSION AGREEMENT

This diversion agreement is entered into on this 20th day of October, 2015, by the above-captioned parties with the approval of their attorneys, if any, and shall continue in force and effect for a term of 12 months.

1. I, the Defendant, fully understand and agree to the following:

- a. ☒ My full name is Sheila Michelle Hays.
- b. ☒ My full name at the time the information or complaint in this case was filed was:
Sheila Michelle Hays.
- c. ☒ I have been charged with the following crime(s), filed in the District Court of Montgomery County, Kansas, via *Complaint* or *Complaint/Information* on 10/24/2013:

Count 1

Commercial gambling; Operating or receiving all earnings

Count 2

Unlawful possession of gambling device

Count 3

Interference with LEO; Obstruct or resist in felony case

- d. ~~/~~ I have the right to demand a prompt, full and complete evidentiary hearing and trial in this matter.
- e. ~~/~~ I have been advised of the right to counsel and given ample time to consult with an attorney before entering this agreement and, if choosing to represent myself, am voluntarily waiving the right to have an attorney represent me concerning this agreement.
- f. ~~/~~ The prosecution of this matter is being deferred pursuant to K.S.A. 22-2906, *et seq.*, and the policies and guidelines of the County Attorney, which have been provided to me in writing and which I have been given ample time to read.
- g. ~~/~~ I understand that diversions of certain crimes may be used to enhance the severity level of certain crimes if I am charged with them in the future.
- h. ~~/~~ I understand that if I am not a citizen of the United States a diversion or conviction for a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.
- i. ~~/~~ I understand that I may be eligible for expungement of this diversion pursuant to K.S.A. 21-6614, and amendments thereto.

2. I, the Defendant, agree to do each of the following things:

- a. ~~/~~ I waive all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment.
- b. ~~/~~ I waive all rights under the law or the constitution of Kansas or of the United States to preliminary examinations and hearings.
- c. ~~/~~ I waive all rights under the law or the constitution of Kansas or of the United States to a speedy trial.
- d. ~~/~~ I waive all rights under the law or the constitution of Kansas or of the United States to a trial by jury.

- e. /s/ I agree not to violate the laws of the United States, of any State, or of any political subdivision of any State during the term of this diversion agreement. Traffic infractions shall not be considered violations of the law.
- f. /s/ I agree to notify my attorney and the County Attorney in writing within seven (7) days of any change in address, telephone number or place of employment and not to move from the State without the prior approval of the County Attorney's Office. Any mail addressed to me at my last known address returned to the County Attorney's Office or to the District Court as not deliverable, no forwarding address on file, etc., will be considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.
- g. /s/ I stipulate that I am the individual named in the Information, and that the offenses charged occurred in Montgomery County, Kansas. I stipulate to the facts as contained in the official reports by the Montgomery County Sheriff's Office, report case number 13-1333, reports by the Kansas Racing and Gaming Commission, written witness statements, and any lab or other test results prepared or taken in connection with this case as being true and accurate. I am agreeing to and waiving my right to require the State to call witnesses to testify, and that I am waiving my rights under the law or the constitution of Kansas or of the United States to confront those witnesses or to call witnesses to testify on my behalf.
- h. /s/ I agree and understand that violation of the terms and conditions of this agreement will result in revocation of diversion and this matter proceeding to trial based solely upon the *Complaint/Information*, official reports identified above, written witness statements, lab or other test results, and any other evidence associated with this case. I stipulate that the previously described items shall be admitted into evidence without objection by me and without further foundation. I further stipulate that any trial on this matter and any proceedings on appeal shall be conducted solely on the stipulations contained herein, and that I will not be entitled to present additional evidence at the trial of the matter or any proceedings on appeal.
- i. /s/ I agree to pay as follows:

Payment of Diversion cost - All Payments must be submitted to the Clerk of the Montgomery County District Court; the Court accepts cash, money orders or cashier's checks.

I shall pay the diversion cost in the amount of \$200.00, the court costs in the amount of \$193.00, and a fingerprinting fee of \$45.00 for a total of \$438.00, **at the time of signing the diversion agreement. The diversion agreement will not be processed until all monies due are paid into the District Court.**

Any cash bond posted by me shall be applied to the balance due. The cash bond cannot be used to pay the diversion cost or court costs. Any remaining cash bond, after being applied to amounts due, will be returned to me.

- j. § I acknowledge and understand that if this diversion is revoked, the criminal proceedings on the original charge(s) will be resumed and the clauses waiving all rights to a speedy trial, all rights to preliminary examinations and hearings, and all rights to a trial by jury, will remain in effect. I acknowledge and understand that *Addendum A Stipulation of Facts* and all stipulations set forth in paragraphs 2(h) and 2(i) will remain in effect. I acknowledge and understand that if the Court finds me guilty, the Court may impose any and all fines and/or incarceration as allowed by law for the original charge(s).
- k. § I agree that the County Attorney's Office shall have thirty (30) days following expiration of this diversion to discover violations of this diversion and to proceed thereon.

3. The State agrees to do each of the following things:

- a. To suspend prosecution of the captioned case so long as the Defendant continues to fulfill the terms and conditions of the diversion agreement.
- b. To dismiss with prejudice and with costs assessed to the Defendant all charges in the captioned case at the end of the diversionary term upon a satisfactory showing that the Defendant has successfully fulfilled the terms of the diversion agreement.

The parties understand that it is the Defendant's responsibility to provide the County Attorney's Office with any documentation required by this agreement.

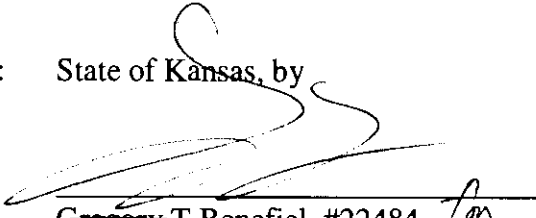
The parties understand that if a motion to revoke diversion and reinstate prosecution is filed, the motion to revoke diversion and reinstate prosecution and a notice of hearing will be mailed directly to the last address provided by the Defendant. It is the Defendant's responsibility to contact his or her attorney in reference to the motion to revoke diversion and reinstate prosecution.

The parties understand and agree that should any section, subsection, sentence, clause, phrase, provision, or exemption of these rules and regulations be declared invalid for any reason, such invalidity shall not affect the remaining portions or provisions contained within the diversion agreement.

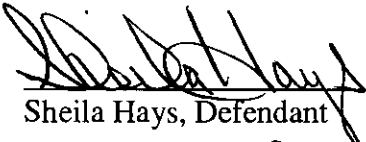
By signing this agreement, I, the Defendant, agree, affirm and stipulate that I have read the entire diversion agreement, understand all of its terms and their meaning, including the rights I am waiving and the obligations I am assuming, and that my decision to enter this agreement is my own free and voluntary act.

Dated this 20th day of October, 2015.

By: State of Kansas, by


Gregory T. Benefiel, #22484
Assistant County Attorney
Montgomery County Attorney's Office
111 E. 11th Street Unit 100
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230

I have read this diversion agreement, fully understand its contents, and agree to its provisions.


Sheila Hays, Defendant

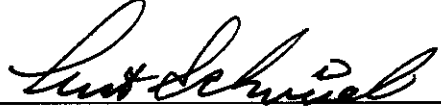
Current Address:

612 S. Ash St.
Bristow, OK 74010

Telephone:

918 231 5652

Approved by:


Curt T. Schneider, #06722
Schneider Law Office
204 West Eighth Street
Post Office Box 562
Coffeyville, Kansas 67337
Phone: (620) 251-6530
FAX: (620) 251-2321
ATTORNEY FOR DEFENDANT

STATE OF KANSAS

VS.

WILLIAM J WESTERMAN
12905 K39
Chanute, KS 66720
White/male **HAIR:**Brown **EYE:** Blue
HGT: 601 **WGT:** 220
AGENCY: Montgomery County Sheriff
AGENCY CASE NUMBER: 13-1613

Defendant

FILED
2013 OCT 25 PM 1:22
Plaintiff
NANCY J. WILLIAMS
CLERK OF DISTRICT COURT
MONTGOMERY CO. KS
Case No. 13CR506 J

COMPLAINT / INFORMATION

Larry Markle, County Attorney, for complaint and information against the above shown defendant, alleges and states:


COUNT I-DEALING IN GAMBLING DEVICES

That on or about September, 2013, in Montgomery County, Kansas, William J Westerman, then and there being did unlawfully, feloniously manufacture, distribute or possess with intent to distribute a gambling device or sub-assembly or essential part thereof. In violation of K.S.A. 2011 Supp. 21-6407, Dealing in Gambling Devices, a severity level 8 nonperson felony. (Penalty: from a minimum of 7 months to a maximum of 23 months in prison and a fine of up to \$100,000; Postrelease supervision term of 12 months)

WITNESSES:

Derek L. Bryant,
Fletcher Hill,
Jason Kastler,
Kelly Stewart,
Chris Williams,
Steven B Aemisegger,
Raychel Johnson,
DJ Lopez,
James L. Root,

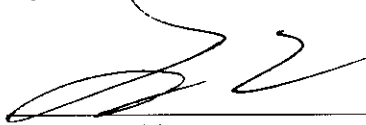
☐ County Attorney Copy ☐ Defense Copy ☐ Defendant Copy



Larry Markle, #12345
County Attorney
ATTORNEY FOR PLAINTIFF

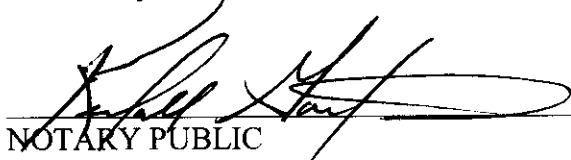
STATE OF KANSAS, COUNTY OF MONTGOMERY, ss:

I, Larry Markle, do solemnly swear, that the matters set forth in the within
complaint/information are true to the best of my information and belief, so help me God.



Larry Markle, #12345
County Attorney

Subscribed and sworn to before me this 24th day of October 2013.



NOTARY PUBLIC

My Commission Expires:



☐ County Attorney Copy ☐ Defense Copy ☐ Defendant Copy

FILED

Gregory T Benefiel, #22484
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: gregorybenefiel@gmail.com

2014 DEC -2 AM 11:27

CLERK JAMES
CLERK OF DISTRICT COURT
MONTGOMERY CO. KS

BY _____

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 2013-CR-506 I

William J Westerman,
12905 K39
Chanute, KS 66720
White/male; DOB: XX/XX/1950
Defendant.

DIVERSION AGREEMENT

This diversion agreement is entered into on this 21 day of November, 2014, by the above-captioned parties with the approval of their attorneys, if any, and shall continue in force and effect for a term of nine (9) months.

1. I, the Defendant, fully understand and agree to the following:

- a. WJW My full name is William J Westerman.
- b. WJW My full name at the time the information or complaint in this case was filed was:
William J Westerman.
- c. WJW I have been charged with the following crime(s), filed in the District Court of Montgomery County, Kansas, via *Amended Complaint/Information* on 11/13/2014:

Count 1

Dealing in Gambling Devices

- d. WJTW I have the right to demand a prompt, full and complete evidentiary hearing and trial in this matter.
 - e. WJTW I have been advised of the right to counsel and given ample time to consult with an attorney before entering this agreement and, if choosing to represent myself, am voluntarily waiving the right to have an attorney represent me concerning this agreement.
 - f. WJTW The prosecution of this matter is being deferred pursuant to K.S.A. 22-2906, *et seq.*, and the policies and guidelines of the County Attorney, which have been provided to me in writing and which I have been given ample time to read.
 - g. WJTW I understand that diversions of certain crimes may be used to enhance the severity level of certain crimes if I am charged with them in the future.
 - h. WJTW I understand that if I am not a citizen of the United States a diversion or conviction for a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.
 - i. WJTW I understand that I may be eligible for expungement of this diversion pursuant to K.S.A. 21-6614, and amendments thereto.
2. I, the Defendant, agree to do each of the following things:
- a. WJTW I waive all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment.
 - b. WJTW I waive all rights under the law or the constitution of Kansas or of the United States to preliminary examinations and hearings.
 - c. WJTW I waive all rights under the law or the constitution of Kansas or of the United States to a speedy trial.
 - d. WJTW I waive all rights under the law or the constitution of Kansas or of the United States to a trial by jury.
 - e. WJTW I agree not to violate the laws of the United States, of any State, or of any political subdivision of any State during the term of this diversion agreement. Traffic infractions shall not be considered violations of the law.
 - f. WJTW I agree to notify my attorney and the County Attorney in writing within seven (7) days of any change in address, telephone number or place of employment and not to move from the State without the prior approval of the County Attorney's Office. Any mail addressed to me at my last known address returned to the County Attorney's Office or to the District Court as not deliverable, no forwarding address on file, etc., will be

considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.

- g. WJW I stipulate that I am the individual named in the Information, and that the offense(s) charged occurred in Montgomery County, Kansas. I agree that the facts as set forth in *Addendum A Stipulation of Facts* are true and accurate. I further stipulate to the facts as contained in the official report by: Montgomery County Sheriff, Report #13-1613, including investigative reports by Kansas Racing and Gaming Commission; written witness statements; and any lab or other test results prepared or taken in connection with this case as being true and accurate. I am agreeing to and waiving my right to require the State to call witnesses to testify, and that I am waiving my rights under the law or the constitution of Kansas or of the United States to confront those witnesses or to call witnesses to testify on my behalf.
- h. WJW I agree and understand that violation of the terms and conditions of this agreement will result in revocation of diversion and this matter proceeding to trial based solely upon the *Amended Complaint/Information, Addendum A Stipulation of Facts*, official reports identified above, written witness statements, lab or other test results, and any other evidence associated with this case. I stipulate that the previously described items shall be admitted into evidence without objection by me and without further foundation. I further stipulate that any trial on this matter and any proceedings on appeal shall be conducted solely on the stipulations contained herein, and that I will not be entitled to present additional evidence at the trial of the matter or any proceedings on appeal.

- i. WJW I agree to pay as follows:

Payment of Diversion cost—All Payments must be submitted to the Clerk of the Montgomery County Court.

I shall pay the diversion cost in the amount of \$150.00, the court costs in the amount of \$193.00, and the fingerprinting fee in the amount of \$45.00, a total of \$388.00, **at the time of signing the diversion agreement. Any check should be made payable to the Montgomery County Clerk of the District Court. The diversion agreement will not be processed until the court costs are paid.**

Any cash bond posted by me shall be applied to the balance due. The cash bond cannot be used to pay the diversion cost or court costs. Any remaining cash bond, after being applied to amounts due, will be returned to me.

I shall pay all remaining costs, if any, in six (6) equal monthly installments on or before the 10th of each month following the signing of the diversion agreement. Payments are to be made payable to the Clerk of the District Court of Montgomery County, 300 East Main Street, Independence, Kansas 67301.

Any check given for payment of the amounts outlined in this diversion agreement which is returned unpaid to the County Attorney or to the Clerk of the District Court, for any

reason, will be considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.

- j. WJW I acknowledge and understand that if this diversion is revoked, the criminal proceedings on the original charge(s) will be resumed and the clauses waiving all rights to a speedy trial, all rights to preliminary examinations and hearings, and all rights to a trial by jury, will remain in effect. I acknowledge and understand that *Addendum A Stipulation of Facts* and all stipulations set forth in paragraphs 2(g) and 2(h) will remain in effect. I acknowledge and understand that if the Court finds me guilty, the Court may impose any and all fines and/or incarceration as allowed by law for the original charge(s).
- k. WJW I agree that the County Attorney's Office shall have thirty (30) days following expiration of this diversion to discover violations of this diversion and to proceed thereon.

3. The State agrees to do each of the following things:

- a. To suspend prosecution of the captioned case so long as the Defendant continues to fulfill the terms and conditions of the diversion agreement.
- b. To dismiss with prejudice and with costs assessed to the Defendant all charges in the captioned case at the end of the diversionary term upon a satisfactory showing that the Defendant has successfully fulfilled the terms of the diversion agreement.

The parties understand that it is the Defendant's responsibility to provide the County Attorney's Office with any documentation required by this agreement.

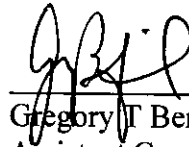
The parties understand that if a motion to revoke diversion and reinstate prosecution is filed, the motion to revoke diversion and reinstate prosecution and a notice of hearing will be mailed directly to the last address provided by the Defendant. It is the Defendant's responsibility to contact his or her attorney in reference to the motion to revoke diversion and reinstate prosecution.

The parties understand and agree that should any section, subsection, sentence, clause, phrase, provision, or exemption of these rules and regulations be declared invalid for any reason, such invalidity shall not affect the remaining portions or provisions contained within the diversion agreement.

By signing this agreement, I, the Defendant, agree, affirm and stipulate that I have read the entire diversion agreement, understand all of its terms and their meaning, including the rights I am waiving and the obligations I am assuming, and that my decision to enter this agreement is my own free and voluntary act.

Dated this 21 day of November, 2014.

By: State of Kansas, by



Gregory T Benefiel, #22484
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230

I have read this diversion agreement, fully understand its contents, and agree to its provisions.


William J Westerman, Defendant

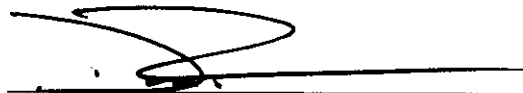
Current Address:

12905 E 39 Hwy
Cherokee KS 66720

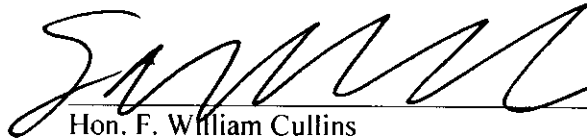
Telephone:

620 431 8488

Approved by:

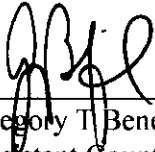


Daniel M. Reynolds, #24628
Emert, Chubb & Gettler, LLC
Post Office Box 747
304 North 6th Street
Independence, Kansas 67301
Phone: (620) 331-1800
FAX: (620) 331-1807
Email: dreynolds@sehc-law.com
ATTORNEY FOR DEFENDANT




Hon. F. William Cullins
DISTRICT COURT JUDGE

Approved by:



Gregory T. Benefiel, #22484
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230



Daniel M. Reynolds, #24628
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Post Office Box 747
304 North 6th Street
Independence, Kansas 67301
Phone: (620) 331-1800
FAX: (620) 331-1807
Email: dreynolds@sehc-law.com
ATTORNEY FOR DEFENDANT

FILED

IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KS

STATE OF KANSAS

Plaintiff

2013 OCT 25 PM 1:22

VS.

NANCY J. WILLIAMS
CLERK OF DISTRICT COURT
MONTGOMERY CO. KS

Case No. 13CR507-I *CW*

WILLIAM F MANN

Defendant

P.O. Box 584

South Coffeyville, OK 74072

White/male **HAIR:** Gray **EYE:** Blue

HGT: 511 **WGT:** 221

AGENCY: Montgomery County Sheriff

AGENCY CASE NUMBER: 13-1321

COMPLAINT / INFORMATION

Larry Markle, County Attorney, for complaint and information against the above shown defendant, alleges and states:

COUNT I-COMMERCIAL GAMBLING; OPERATING OR RECEIVING ALL EARNINGS

That on or about the 19th day of August, 2013, in Montgomery County, Kansas, William F Mann, then and there being did unlawfully, feloniously and knowingly operate or receive all or part of the earnings of a gambling place, a defined in K.S.A. 2011 Supp. 21-6403(e). In violation of K.S.A. 2011 Supp. 21-6406(a)(1)(A), Commercial Gambling, a severity level 8 nonperson felony. (Penalty: from a minimum of 7 months to a maximum of 23 months in prison and a fine of up to \$100,000; Postrelease supervision term of 12 months)

COUNT II-UNLAWFUL POSSESSION OF GAMBLING DEVICE

That on or about the 19th day of August, 2013, in Montgomery County, Kansas, William F Mann, then and there being did unlawfully possess a gambling device. In violation of K.S.A. 2011 Supp. 21-6408, Unlawful Possession of a Gambling Device, a class B nonperson misdemeanor. (Maximum penalty: six months in county jail and a fine of up to \$1000)

WITNESSES:

Dennis Andres,

Kwin Bromley,

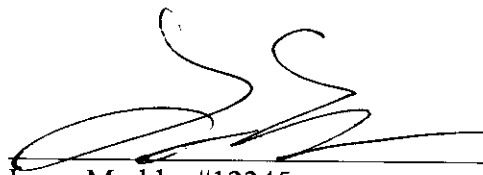
Joseph Dye,

Jason Kastler,

Chris Williams,

[] County Attorney Copy [] Defense Copy [] Defendant Copy

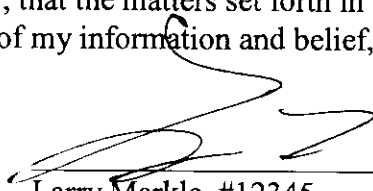
Larry Brott,
Donna Palmer,



Larry Markle, #12345
County Attorney
ATTORNEY FOR PLAINTIFF

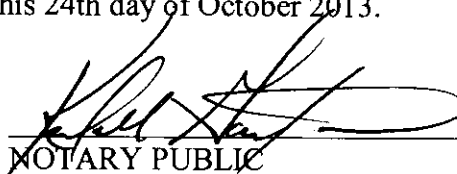
STATE OF KANSAS, COUNTY OF MONTGOMERY, ss:

I, Larry Markle, do solemnly swear, that the matters set forth in the within
complaint/information are true to the best of my information and belief, so help me God.

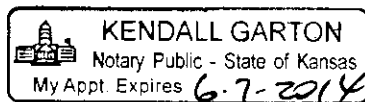


Larry Markle, #12345
County Attorney

Subscribed and sworn to before me this 24th day of October 2013.


NOTARY PUBLIC

My Commission Expires:



Gregory T Benefiel, #22484
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: gregorybenefiel@gmail.com

FILED

2014 DEC 10 PM 3:03

CLERK OF DISTRICT COURT
MONTGOMERY COUNTY, KANSAS

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 2013-CR-507 I(C)

William F Mann,

P.O. Box 584

South Coffeyville, OK 74072

White/male; DOB: XX/XX/1947

Defendant.

DIVERSION AGREEMENT

This diversion agreement is entered into on this 10th day of December, 2014, by the above-captioned parties with the approval of their attorneys, if any, and shall continue in force and effect for a term of nine (9) months.

1. I, the Defendant, fully understand and agree to the following:

a. WFM My full name is William F Mann WFM

b. WFM My full name at the time the information or complaint in this case was filed was:
William F Mann W.F.M

c. WFM I have been charged with the following crime(s), filed in the District Court of Montgomery County, Kansas, via *Amended Complaint/Information* on 11/13/2014:

Count 1
Commercial Gambling

Count 2

Unlawful Possession of a Gambling Device

Count 3

Commercial Gambling

Count 4

Unlawful Possession of a Gambling Device

- d. W.F.M. I have the right to demand a prompt, full and complete evidentiary hearing and trial in this matter.
- e. W.F.M. I have been advised of the right to counsel and given ample time to consult with an attorney before entering this agreement and, if choosing to represent myself, am voluntarily waiving the right to have an attorney represent me concerning this agreement.
- f. W.F.M. The prosecution of this matter is being deferred pursuant to K.S.A. 22-2906, *et seq.*, and the policies and guidelines of the County Attorney, which have been provided to me in writing and which I have been given ample time to read.
- g. W.F.M. I understand that diversions of certain crimes may be used to enhance the severity level of certain crimes if I am charged with them in the future.
- h. W.F.M. I understand that if I am not a citizen of the United States a diversion or conviction for a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.
- i. W.F.M. I understand that I may be eligible for expungement of this diversion pursuant to K.S.A. 21-6614, and amendments thereto.
2. I, the Defendant, agree to do each of the following things:
- a. W.F.M. I waive all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment.
- b. W.F.M. I waive all rights under the law or the constitution of Kansas or of the United States to preliminary examinations and hearings.
- c. W.F.M. I waive all rights under the law or the constitution of Kansas or of the United States to a speedy trial.
- d. W.F.M. I waive all rights under the law or the constitution of Kansas or of the United States to a trial by jury.

- e. W.F.M. I agree not to violate the laws of the United States, of any State, or of any political subdivision of any State during the term of this diversion agreement. Traffic infractions shall not be considered violations of the law.
- f. W.F.M. I agree to notify my attorney and the County Attorney in writing within seven (7) days of any change in address, telephone number or place of employment and not to move from the State without the prior approval of the County Attorney's Office. Any mail addressed to me at my last known address returned to the County Attorney's Office or to the District Court as not deliverable, no forwarding address on file, etc., will be considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.
- g. W.F.M. I stipulate that I am the individual named in the Information, and that the offenses charged occurred in Montgomery County, Kansas. I agree that the facts as set forth in *Addendum A Stipulation of Facts* are true and accurate. I further stipulate to the facts as contained in the official report by: Montgomery County Sheriff, Reports #13-1321 and #13-1334, including narrative reports completed by agents of the Kansas Gaming and Gaming Commission; written witness statements; and any lab or other test results prepared or taken in connection with this case as being true and accurate. I am agreeing to and waiving my right to require the State to call witnesses to testify, and that I am waiving my rights under the law or the constitution of Kansas or of the United States to confront those witnesses or to call witnesses to testify on my behalf.
- h. W.F.M. I agree and understand that violation of the terms and conditions of this agreement will result in revocation of diversion and this matter proceeding to trial based solely upon the *Amended Complaint/Information, Addendum A Stipulation of Facts*, official reports identified above, written witness statements, lab or other test results, and any other evidence associated with this case. I stipulate that the previously described items shall be admitted into evidence without objection by me and without further foundation. I further stipulate that any trial on this matter and any proceedings on appeal shall be conducted solely on the stipulations contained herein, and that I will not be entitled to present additional evidence at the trial of the matter or any proceedings on appeal.
- i. W.F.M. I agree to pay as follows:

Payment of Diversion cost—All Payments must be submitted in the form of a check, money order, or cashier's check.

I shall pay the diversion cost in the amount of \$150.00 and the court costs in the amount of \$193.00, fingerprinting fee of \$45.00, totaling \$388.00, **to the District Court at the time of signing the diversion agreement. Any check should be made payable to the Montgomery County Clerk of the District Court. The diversion agreement will not be processed until the court costs are paid.**

Any cash bond posted by me shall be applied to the balance due. The cash bond cannot be used to pay the diversion cost or court costs. Any remaining cash bond, after being applied to amounts due, will be returned to me.

I shall pay all remaining costs, if any, in six (6) equal monthly installments on or before the 10th of each month following the signing of the diversion agreement. Payments are to be made payable to the Clerk of the District Court of Montgomery County, 300 East Main Street, Independence, Kansas 67301.

Any check given for payment of the amounts outlined in this diversion agreement which is returned unpaid to the County Attorney or to the Clerk of the District Court, for any reason, will be considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.

- j. W.F.M. I acknowledge and understand that if this diversion is revoked, the criminal proceedings on the original charge(s) will be resumed and the clauses waiving all rights to a speedy trial, all rights to preliminary examinations and hearings, and all rights to a trial by jury, will remain in effect. I acknowledge and understand that *Addendum A Stipulation of Facts* and all stipulations set forth in paragraphs 2(g) and 2(h) will remain in effect. I acknowledge and understand that if the Court finds me guilty, the Court may impose any and all fines and/or incarceration as allowed by law for the original charge(s).
- k. W.F.M. I agree that the County Attorney's Office shall have thirty (30) days following expiration of this diversion to discover violations of this diversion and to proceed thereon.

3. The State agrees to do each of the following things:

- a. To suspend prosecution of the captioned case so long as the Defendant continues to fulfill the terms and conditions of the diversion agreement.
- b. To dismiss with prejudice and with costs assessed to the Defendant all charges in the captioned case at the end of the diversionary term upon a satisfactory showing that the Defendant has successfully fulfilled the terms of the diversion agreement.

The parties understand that it is the Defendant's responsibility to provide the County Attorney's Office with any documentation required by this agreement.

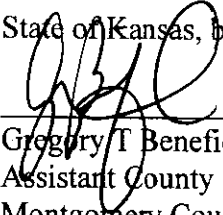
The parties understand that if a motion to revoke diversion and reinstate prosecution is filed, the motion to revoke diversion and reinstate prosecution and a notice of hearing will be mailed directly to the last address provided by the Defendant. It is the Defendant's responsibility to contact his or her attorney in reference to the motion to revoke diversion and reinstate prosecution.

The parties understand and agree that should any section, subsection, sentence, clause, phrase, provision, or exemption of these rules and regulations be declared invalid for any reason, such invalidity shall not affect the remaining portions or provisions contained within the diversion agreement.

By signing this agreement, I, the Defendant, agree, affirm and stipulate that I have read the entire diversion agreement, understand all of its terms and their meaning, including the rights I am waiving and the obligations I am assuming, and that my decision to enter this agreement is my own free and voluntary act.

Dated this 10th day of December, 2014.

By: State of Kansas, by


Gregory T Benefiel, #22484
Assistant County Attorney
Montgomery County Attorney's Office
111 E. 11th Street Unit 100
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230

I have read this diversion agreement, fully understand its contents, and agree to its provisions.

William F Mann
William F Mann, Defendant

Current Address:

P.O. Box 584
South Coffeyville OK 74072

Telephone:

620-515-0055

Approved by:



Curt T. Schneider, #06722
Post Office Box 562
Coffeyville, Kansas 67337
Phone: (620) 251-6530
FAX: (620) 251-2321
Email: schlawofc@hotmail.com
ATTORNEY FOR DEFENDANT

Exhibit 11

Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com

FILED

2017 NOV 13 PM 3:42

CLERK OF DISTRICT COURT
MONTGOMERY COUNTY, KANSAS
BY _____

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 2017-CR- 467 I

Levi D Hart,

4410 CR 4300

Independence, KS 67301

Defendant.

AGENCY: Montgomery County Sheriff #17-1188

INFORMATION

COMES NOW the State of Kansas, by and through Larry Markle, duly qualified and acting Montgomery County, County Attorney, for and on behalf of the State of Kansas alleges and states for its *Information* against the defendant, **Levi D Hart**:

COUNT I

Giving a worthless check; Value \$1000 to \$25,000

That on or about the 20th day of April, 2017, in Montgomery County, Kansas, one Levi D Hart, then and there being present did unlawfully and feloniously make, draw, issue or deliver to Ball & Prier Tire, Inc, with the intent to defraud, a check, number 12281, for the sum of \$2736.80, drawn upon Community National Bank, knowing at the time of said making, drawing, issuing or delivering of such check as aforesaid, that the defendant had insufficient funds in, or credits with, Community National Bank for the payment of said check in full upon presentation. In violation of K.S.A. 2011 Supp. 21-5821(a) & (b)(2)(A), Giving a Worthless Check, a severity level 9 nonperson felony. (Penalty: from a minimum of 5 months to a maximum of 17 months in prison and a fine of up to \$100,000; Postrelease supervision term of 12 months)

All of the said acts then and there committed being contrary to the statutes in such cases made and provided and being against the peace and dignity of the State of Kansas.

WITNESSES:

Christopher Bishop
Ball & Prier Tire, Inc
Community National Bank
Jason Burton
Debbie Ball

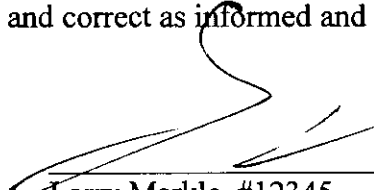


Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com

VERIFICATION

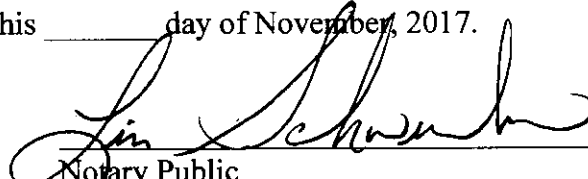
STATE OF KANSAS)
) ss.
COUNTY OF MONTGOMERY)

Larry Markle, duly qualified and acting County Attorney, authorized and empowered to prosecute for and on behalf of the State of Kansas, Montgomery County, of lawful age, being first duly sworn on oath deposes and states that the matters and things set forth and contained in the above and foregoing *Information* are true and correct as informed and to the best of my knowledge and belief, so help me God.



Larry Markle, #12345
County Attorney

Subscribed and sworn to before me this _____ day of November, 2017.



Notary Public

My term expires: 9.23.21



Timothy J. Grillot, #11415
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: timgrillotaca@gmail.com

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 17-CR-467-I

Levi D Hart,

4410 CR 4300

Independence, KS 67301

white/male; DOB: XX/XX/1984

Defendant.

DIVERSION AGREEMENT

This diversion agreement is entered into on this _____ day of January, 2018, by the above-captioned parties with the approval of their attorneys, if any, and shall continue in force and effect for a term of 12 months.

1. I, the Defendant, fully understand and agree to the following:

- a. L.H. My full name is Levi D. Hart.
- b. L.H. My full name at the time the information or complaint in this case was filed was:
Levi D. Hart.
- c. L.H. I have been charged with the following crime(s), filed in the District Court of Montgomery County, Kansas, via *Complaint* or *Complaint/Information* on 10/25/2017:

Count 1

Giving a worthless check; Value \$1000 to \$25,000

- d. L.H. I have the right to demand a prompt, full and complete evidentiary hearing and trial in this matter.
- e. L.H. I have been advised of the right to counsel and given ample time to consult with an attorney before entering this agreement and, if choosing to represent myself, am voluntarily waiving the right to have an attorney represent me concerning this agreement.
-
- f. L.H. The prosecution of this matter is being deferred pursuant to K.S.A. 22-2906, *et seq.*, and the policies and guidelines of the County Attorney, which have been provided to me in writing and which I have been given ample time to read.
- g. L.H. I understand that diversions of certain crimes may be used to enhance the severity level of certain crimes if I am charged with them in the future.
- h. L.H. I understand that if I am not a citizen of the United States a diversion or conviction for a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.
- i. L.H. I understand that I may be eligible for expungement of this diversion pursuant to K.S.A. 21-6614, and amendments thereto.
2. I, the Defendant, agree to do each of the following things:
- a. L.H. I waive all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment.
- b. L.H. I waive all rights under the law or the constitution of Kansas or of the United States to preliminary examinations and hearings.
- c. L.H. I waive all rights under the law or the constitution of Kansas or of the United States to a speedy trial.
- d. L.H. I waive all rights under the law or the constitution of Kansas or of the United States to a trial by jury.
- e. L.H. I agree not to violate the laws of the United States, of any State, or of any political subdivision of any State during the term of this diversion agreement. Traffic infractions shall not be considered violations of the law.
- f. L.H. I agree to notify my attorney and the County Attorney in writing within seven (7) days of any change in address, telephone number or place of employment and not to move from the State without the prior approval of the County Attorney's Office. Any mail addressed to me at my last known address returned to the County Attorney's Office

or to the District Court as not deliverable, no forwarding address on file, etc., will be considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.

- g. L.H. I stipulate that I am the individual named in the Information, and that the offense(s) charged occurred in Montgomery County, Kansas. I agree that the facts as set forth in *Addendum A Stipulation of Facts* are true and accurate. I further stipulate to the facts as contained in the official report by:

Montgomery County Sheriff, Report Number: 17-1188 ,
written witness statements, and any lab or other test results prepared or taken in connection with this case as being true and accurate. I am agreeing to and waiving my right to require the State to call witnesses to testify, and that I am waiving my rights under the law or the constitution of Kansas or of the United States to confront those witnesses or to call witnesses to testify on my behalf.

- h. L.H. I agree and understand that violation of the terms and conditions of this agreement will result in revocation of diversion and this matter proceeding to trial based solely upon the *Complaint* or *Complaint/Information*, *Addendum A Stipulation of Facts*, official reports identified above, written witness statements, lab or other test results, and any other evidence associated with this case. I stipulate that the previously described items shall be admitted into evidence without objection by me and without further foundation. I further stipulate that any trial on this matter and any proceedings on appeal shall be conducted solely on the stipulations contained herein, and that I will not be entitled to present additional evidence at the trial of the matter or any proceedings on appeal.

- i. L.H. I agree to pay as follows:

Payment of Diversion cost - All Payments must be submitted to the Clerk of the Montgomery County District Court; the Court accepts cash, money orders or cashier's checks.

I shall pay as follows:

Diversion fee:	\$ 300.00
Court costs:	\$ 193.00
Restitution to Ball & Prier	\$ 2,777.85
Fingerprint fee:	\$ 45.00
Total:	\$ 3,315.85

All costs and fees will be paid at the time of signing the diversion agreement. The diversion agreement will not be processed until all monies due are paid into the District Court.

Any cash bond posted by me shall be applied to the balance due. The cash bond cannot be used to pay the diversion cost or court costs. Any remaining cash bond, after being applied to amounts due, will be returned to me.

- j. L.H. I acknowledge and understand that if this diversion is revoked, the criminal proceedings on the original charge(s) will be resumed and the clauses waiving all rights to a speedy trial, all rights to preliminary examinations and hearings, and all rights to a trial by jury, will remain in effect. I acknowledge and understand that *Addendum A Stipulation of Facts* and all stipulations set forth in paragraphs 2(h) and 2(i) will remain in effect. I acknowledge and understand that if the Court finds me guilty, the Court may impose any and all fines and/or incarceration as allowed by law for the original charge(s).
- k. L.H. I agree that the County Attorney's Office shall have thirty (30) days following expiration of this diversion to discover violations of this diversion and to proceed thereon.

l. _____ **Special Conditions:**

3. The State agrees to do each of the following things:

- a. To suspend prosecution of the captioned case so long as the Defendant continues to fulfill the terms and conditions of the diversion agreement.
- b. To dismiss with prejudice and with costs assessed to the Defendant all charges in the captioned case at the end of the diversionary term upon a satisfactory showing that the Defendant has successfully fulfilled the terms of the diversion agreement.

The parties understand that it is the Defendant's responsibility to provide the County Attorney's Office with any documentation required by this agreement.

The parties understand that if a motion to revoke diversion and reinstate prosecution is filed, the motion to revoke diversion and reinstate prosecution and a notice of hearing will be mailed directly to the last address provided by the Defendant. It is the Defendant's responsibility to contact his or her attorney in reference to the motion to revoke diversion and reinstate prosecution.

The parties understand and agree that should any section, subsection, sentence, clause, phrase, provision, or exemption of these rules and regulations be declared invalid for any reason, such invalidity shall not affect the remaining portions or provisions contained within the diversion agreement.

By signing this agreement, I, the Defendant, agree, affirm and stipulate that I have read the entire diversion agreement, understand all of its terms and their meaning, including the rights I am waiving and the obligations I am assuming, and that my decision to enter this agreement is my own free and voluntary act.

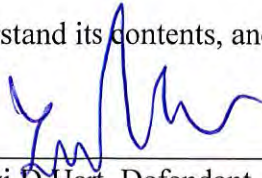
Dated this 3 day of 16, 2018.

By: State of Kansas, by



Timothy J. Grillot, #11415
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230

I have read this diversion agreement, fully understand its contents, and agree to its provisions.



Levi D Hart, Defendant

Current Address:

4410 CR 4300
Independence, Mo 67301

Telephone:

620-714-1712

Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com

FILED

2016 JUN 28 AM 8:30

JOHN BRATT
CLERK OF DISTRICT COURT
MONTGOMERY CO., KS

BY _____

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 2016-CR- 312 I

Brian L Cunningham,

2905 CR 4000

Independence, KS 67301

Defendant.

AGENCY: Montgomery County Sheriff #12-1671

COMPLAINT / INFORMATION

COMES NOW the State of Kansas, by and through Larry Markle, duly qualified and acting Montgomery County, County Attorney, for and on behalf of the State of Kansas alleges and states for its *Complaint/Information* against the defendant, **Brian L Cunningham**:

COUNT I

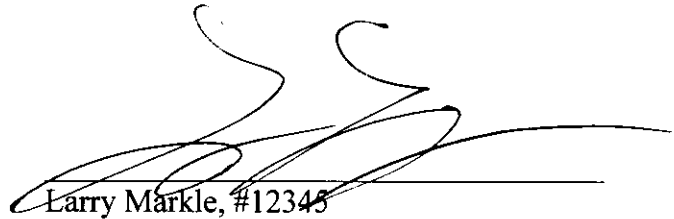
Impair a security interest; Conceal/destroy personal prop > \$25,000

That on or about October, 2012, in Montgomery County, Kansas, Brian L Cunningham, then and there being present did unlawfully, with the intent to defraud, damage, destroy or conceal any personal property subject to a security interest; AND/OR sell, exchange or otherwise dispose of any personal property subject to a security interest without the written consent of the secured party, where such sale, exchange or other disposition is not authorized by the secured party under the terms of the security agreement In violation of K.S.A. 21-5830, Impair a Security Interest. (Maximum penalty: a severity level 7 nonperson felony, 11 to 34 months, 24 months postrelease, \$100,000 and a fine of up to \$1000)

All of the said acts then and there committed being contrary to the statutes in such cases made and provided and being against the peace and dignity of the State of Kansas.

WITNESSES:

Kyle Hand
First National Bank
Don Kerle
Brad Oaks
Steve W. Walton

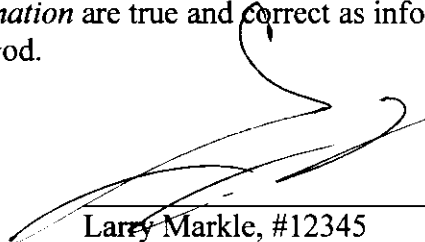


Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com

VERIFICATION

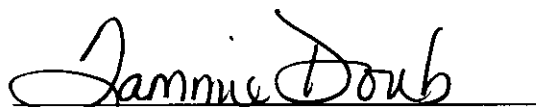
STATE OF KANSAS)
) ss.
COUNTY OF MONTGOMERY)

Larry Markle, duly qualified and acting County Attorney, authorized and empowered to prosecute for and on behalf of the State of Kansas, Montgomery County, of lawful age, being first duly sworn on oath deposes and states that the matters and things set forth and contained in the above and foregoing *Complaint/Information* are true and correct as informed and to the best of my knowledge and belief, so help me God.



Larry Markle, #12345
County Attorney

Subscribed and sworn to before me this 22nd day of June, 2016.



Notary Public
My term expires: _____



**IN THE DISTRICT COURT OF MONTGOMERY, KANSAS
SITTING AT INDEPENDENCE**

STATE OF KANSAS,

Plaintiff,

vs.

No. 16-CR 312 I

Brian L. Cunningham,

Defendant.

DIVERSION AGREEMENT

THE PARTIES TO THER AGREEMENT ARE:

1. The State appears by Larry Markle, County Attorney.
2. The defendant is a Caucasian male, his date of birth is March 5, 1962, and his Social Security number is XXX-XX-1516.

3. The defendant's attorney is Nicholas R. Grillot.

A. CHARGES AND FACTS: The defendant stipulates to the factual basis for the charge(s) in that: on or about October, 2012, in Montgomery County, Kansas, defendant did, by means other than fire or explosive, unlawfully, and knowingly damage, deface, destroy or substantially impair the use of property, in which another, First Oak Bank, has an interest, without the consent of said other person, said damage being less than \$1,000.00, all in violation of K.S.A. 21-5813(a)(1)(C)(3). Criminal Damage to Property, a Class B nonperson misdemeanor. (Penalty: From a maximum of 12 months in county jail and a fine of up to \$1,500.00. *See* K.S.A. 21-5813 and amendments thereto.) Any additional evidence attached, if any, all of which are incorporated herein by reference as facts stipulated to: See attached Stipulation of Facts and any other evidence.

B. STIPULATIONS AND WAIVERS:

1. The defendant has voluntarily waived his right to a speedy trial.
2. The defendant has voluntarily waived his right to a jury trial.

3. The defendant understands that the State must prove his guilty beyond a reasonable doubt and that he has a right to trial. The defendant further understands and agrees that should this Agreement be revoked for any reason that this matter shall proceed to trial on the above stipulation of facts and that the defendant shall not be allowed to present any additional evidence.

4. The defendant understands that during the period of diversion of prosecution, the charges pending against him will remain in full force and effect and that the said matter may be set for trial prior to the end of the diversion period upon termination of the agreement by any party to this agreement.

5. The defendant understands that, if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint.

6. The defendant understands that upon successful completion of the diversion period, the complaint will be dismissed with prejudice by the State of Kansas.

C. CONDITIONS OF RELEASE: It is therefore agreed that said defendant be, and is hereby released pending trial or disposition for a period of Eighteen (18) months, conditioned upon the successful completion of the diversionary program and upon the following conditions, to-wit:

1. That he refrains from violating any of the laws of the United States or of any state, or ordinances of any city or town.

2. That he report to the County Attorney's office or any other person, at any time, that he may be requested to do so by the County Attorney's office.

3. That he conducts himself at all times as a law-abiding citizen.

4. That he notify the County Attorney's office of his current address or any change of address.
5. That he not come on the property of the victim in this case.
6. Further, that in the event of the Defendant's violation of this Agreement, the County Attorney may:
 - a. Ask the Court to revoke this Agreement and reinstate this case on the Trial docket for further prosecution;
 - b. Notify the defendant at the address in this Agreement or at the last known address in the County Attorney's file;
 - c. Notify the defendant's Attorney at the address in this Agreement or at the last known address in the County Attorney's file; and
 - d. Specify the conditions of your program that you have violated.
7. That at the time of filing of this Agreement he must pay:
 - a. Court costs of the action in the amount of \$158.00;
 - b. Diversion fee of \$300.00;
 - c. Fingerprinting fees to the Clerk of the District Court of \$45.00
 - d. Fine in the amount of \$ -0-;
 - e. The defendant reimburses Montgomery County for Court appointed attorney's fees, where applicable, of \$ -0-.
8. Restitution to EMC Insurance, Co. payable: pursuant to the restitution order to be entered in this case and as set forth in the parties' settlement agreement reached in the corresponding civil case styled *EMC Insurance Co. v. Brian L. Cunningham, et al*, Case No. 14 CV 181 I, pending in District Court of Montgomery County, Kansas.

9. Violation of any of the conditions of supervision may result in revocation or modification of the diversion program. The County Attorney may release you from supervision at any time.

10. The County Attorney or the defendant hereby reserves the right to terminate this agreement for cause at any time prior to the successful completion of the term of the diversion program and demand the matter be set immediately for trial.

11. The Defendant and his attorney hereby state that they have read, reviewed, and understood this Agreement and will comply with its terms.

IT IS SO ORDERED.

This Order is effective as of the date and time shown on the electronic file stamp.

APPROVED BY:

/s/ Larry Markle
LARRY MARKLE #12345
County Attorney

/s/ Brian L. Cunningham
Brian L. Cunningham
Defendant

/s/ Nicholas R. Grillo
NICHOLAS R. GRILLOT #22054
Attorney for Defendant

Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com

FILED

2014 OCT 30 PM 2:41

CLERK OF DISTRICT COURT
MONTGOMERY COUNTY, KANSAS

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

VS.

Case No. 14CR483 IC

Chandra Elise Lewis,

1324 N 8th St
Independence, KS 67301

Defendant.

AGENCY: Coffeyville Police Department #14-11285

COMPLAINT / INFORMATION

COMES NOW the State of Kansas, by and through Larry Markle, duly qualified and acting Montgomery County County Attorney, for and on behalf of the State of Kansas alleges and states for its *Complaint/Information* against the defendant, **Chandra Elise Lewis**:

COUNT I

Theft - Value less than \$1,000

That on or about the 2nd day of October, 2014 and the 24th day of November, 2014, in Montgomery County, Kansas, Chandra Elise Lewis, did then and there unlawfully obtain or exert unauthorized control over property or services worth less than \$1,000.00, to-wit: Check #4033 27191287 from US Treasury, with the intent to permanently deprive the owner, to-wit: Marcia Faye Abell, of the possession, use or benefit of such property or services, all in violation of K.S.A. 21-5801(a)(1). Theft, a Class A nonperson misdemeanor. (Maximum penalty: One year in county jail and a fine of up to \$2500. K.S.A. 21-6602 and K.S.A. 21-6611.)

COUNT II

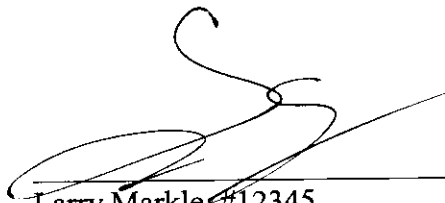
Forgery; Distributing or issuing written instrument

That on or about the 2nd day of October, 2014 and the 24th day of November, 2014, in Montgomery County, Kansas, Chandra Elise Lewis, then and there being present did unlawfully, feloniously, and with the intent to defraud, issue or deliver a written instrument, to-wit: Check #4033 27191287 from US Treasury, value: \$819.00, bearing Marcia Faye Abell as the owner(s) of the account, knowing that said written instrument had been made, altered or endorsed in such a manner that it purports to have been made, altered or endorsed by Marcia Faye Abell, who did not authorize the making, altering or endorsing of said written instrument,; in violation of K.S.A. 2011 Supp. 21-5823(a)(2), Forgery, a severity level 8 nonperson felony. (Penalty: from a minimum of 7 months to a maximum of 23 months in prison and a fine of up to \$100,000; Postrelease supervision term of 12 months)

All of the said acts then and there committed being contrary to the statutes in such cases made and provided and being against the peace and dignity of the State of Kansas.

WITNESSES:

Joseph Hawk
Shelby Sewell
Marcia Faye Abell
Karen L Hernandez
Christy Mavers
Melissa Preston



Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com


VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF MONTGOMERY)

State v. Chandra Elise Lewis
2014-TC-000545-I-

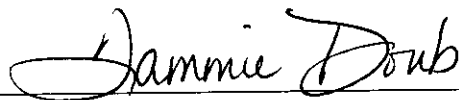
[] County Attorney Copy [] Defense Copy [] Defendant Copy
Complaint/Information Page 2

Larry Markle, duly qualified and acting County Attorney, authorized and empowered to prosecute for and on behalf of the State of Kansas, Montgomery County, of lawful age, being first duly sworn on oath deposes and states that the matters and things set forth and contained in the above and foregoing *Complaint/Information* are true and correct as informed and to the best of my knowledge and belief, so help me God.



Larry Markle, #12345
County Attorney

Subscribed and sworn to before me this 30th day of December, 2014.



Notary Public

My term expires: _____

TAMMIE DOUB
MY COMMISSION EXPIRES
May 15, 2016

Michael L Leyba, #16862
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: mleyba01@gmail.com

FILED

2016 MAR 31 AM 11:19

JONI PRATT
CLERK OF DISTRICT COURT
MONTGOMERY COUNTY

BY _____

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 2014-CR-000483-I-FE

Chandra Elise Lewis,
1324 N 8th St
Independence, KS 67301
white/female; DOB: XX/XX/1975
Defendant.

DIVERSION AGREEMENT

This diversion agreement is entered into on this ____ day of _____, 2015, by the above-captioned parties with the approval of their attorneys, if any, and shall continue in force and effect for a term of 12 months.

1. I, the Defendant, fully understand and agree to the following:

- a. CL My full name is Chandra Lewis.
- b. CL My full name at the time the information or complaint in this case was filed was: _____.
- c. CL I have been charged with the following crime(s), filed in the District Court of Montgomery County, Kansas, via *Complaint* or *Complaint/Information* on 12/30/2014:

Count 1
Theft - Value less than \$1,000

Count 2

Forgery; Distributing or issuing written instrument

- d. CH I have the right to demand a prompt, full and complete evidentiary hearing and trial in this matter.
- e. CH I have been advised of the right to counsel and given ample time to consult with an attorney before entering this agreement and, if choosing to represent myself, am voluntarily waiving the right to have an attorney represent me concerning this agreement.
- f. CH The prosecution of this matter is being deferred pursuant to K.S.A. 22-2906, *et seq.*, and the policies and guidelines of the County Attorney, which have been provided to me in writing and which I have been given ample time to read.
- g. CH I understand that diversions of certain crimes may be used to enhance the severity level of certain crimes if I am charged with them in the future.
- h. CH I understand that if I am not a citizen of the United States a diversion or conviction for a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.
- i. CH I understand that I may be eligible for expungement of this diversion pursuant to K.S.A. 21-6614, and amendments thereto.
2. I, the Defendant, agree to do each of the following things:
- a. CH I waive all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment.
- b. CH I waive all rights under the law or the constitution of Kansas or of the United States to preliminary examinations and hearings.
- c. CH I waive all rights under the law or the constitution of Kansas or of the United States to a speedy trial.
- d. CH I waive all rights under the law or the constitution of Kansas or of the United States to a trial by jury.
- e. CH I agree not to violate the laws of the United States, of any State, or of any political subdivision of any State during the term of this diversion agreement. Traffic infractions shall not be considered violations of the law.
- f. CH I agree to notify my attorney and the County Attorney in writing within seven (7) days of any change in address, telephone number or place of employment and not to move from the State without the prior approval of the County Attorney's Office. Any

mail addressed to me at my last known address returned to the County Attorney's Office or to the District Court as not deliverable, no forwarding address on file, etc., will be considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.

g. CY I stipulate that I am the individual named in the Information, and that the offense(s) charged occurred in Montgomery County, Kansas. I agree that the facts as set forth in *Addendum A Stipulation of Facts* are true and accurate. I further stipulate to the facts as contained in the official report by: Coffeyville Police Department, Report Number: 14-11285, written witness statements, and any lab or other test results prepared or taken in connection with this case as being true and accurate. I am agreeing to and waiving my right to require the State to call witnesses to testify, and that I am waiving my rights under the law or the constitution of Kansas or of the United States to confront those witnesses or to call witnesses to testify on my behalf.

h. CY I agree and understand that violation of the terms and conditions of this agreement will result in revocation of diversion and this matter proceeding to trial based solely upon the *Complaint* or *Complaint/Information*, *Addendum A Stipulation of Facts*, official reports identified above, written witness statements, lab or other test results, and any other evidence associated with this case. I stipulate that the previously described items shall be admitted into evidence without objection by me and without further foundation. I further stipulate that any trial on this matter and any proceedings on appeal shall be conducted solely on the stipulations contained herein, and that I will not be entitled to present additional evidence at the trial of the matter or any proceedings on appeal.

i. CY I agree to pay as follows:

Payment of Diversion cost - All Payments must be submitted to the Clerk of the Montgomery County District Court; the Court accepts cash, money orders or cashier's checks.

1.	Restitution to Karen Hernandez, 443 Pearl, Independence, KS 67314	\$ 819.00
2.	Diversion fee in the amount of	\$ 200.00
3.	Court Costs in the amount of	\$ 193.00
4.	Attorney Fees in the amount of	\$ 150.00
5.	Fingerprint fee in the amount of	\$ 45.00

	TOTAL	\$1,407.00

The total of \$1,407.00, must be paid at the time of signing the diversion agreement. The diversion agreement will not be processed until all monies due are paid into the District Court.

Any cash bond posted by me shall be applied to the balance due.

- j. CH I acknowledge and understand that if this diversion is revoked, the criminal proceedings on the original charge(s) will be resumed and the clauses waiving all rights to a speedy trial, all rights to preliminary examinations and hearings, and all rights to a trial by jury, will remain in effect. I acknowledge and understand that *Addendum A Stipulation of Facts* and all stipulations set forth in paragraphs 2(h) and 2(i) will remain in effect. I acknowledge and understand that if the Court finds me guilty, the Court may impose any and all fines and/or incarceration as allowed by law for the original charge(s).
- k. CH I agree that the County Attorney's Office shall have thirty (30) days following expiration of this diversion to discover violations of this diversion and to proceed thereon.

3. The State agrees to do each of the following things:

- a. To suspend prosecution of the captioned case so long as the Defendant continues to fulfill the terms and conditions of the diversion agreement.
- b. To dismiss with prejudice and with costs assessed to the Defendant all charges in the captioned case at the end of the diversionary term upon a satisfactory showing that the Defendant has successfully fulfilled the terms of the diversion agreement.

The parties understand that it is the Defendant's responsibility to provide the County Attorney's Office with any documentation required by this agreement.

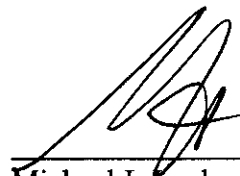
The parties understand that if a motion to revoke diversion and reinstate prosecution is filed, the motion to revoke diversion and reinstate prosecution and a notice of hearing will be mailed directly to the last address provided by the Defendant. It is the Defendant's responsibility to contact his or her attorney in reference to the motion to revoke diversion and reinstate prosecution.

The parties understand and agree that should any section, subsection, sentence, clause, phrase, provision, or exemption of these rules and regulations be declared invalid for any reason, such invalidity shall not affect the remaining portions or provisions contained within the diversion agreement.

By signing this agreement, I, the Defendant, agree, affirm and stipulate that I have read the entire diversion agreement, understand all of its terms and their meaning, including the rights I am waiving and the obligations I am assuming, and that my decision to enter this agreement is my own free and voluntary act.

Dated this _____ day of October, 2015.

By: State of Kansas, by



Michael L. Leyba, #16862
Assistant County Attorney
Montgomery County Attorney's Office
111 E. 11th Street Unit 100
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230

I have read this diversion agreement, fully understand its contents, and agree to its provisions.



Chandra Elise Lewis, Defendant

Current Address:

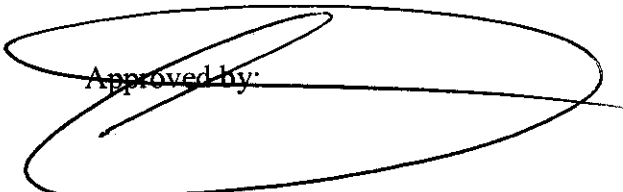
3801 N. 13th #705

Wichita, KS 67203

Telephone:

(316) 925-1577

Approved by:



Heath Lampson SC#19542
200 Arco Place, P.O. Box 116
Independence, KS 67301
ATTORNEY FOR DEFENDANT

Exhibit 12

Lisa D Montgomery, #18243
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lisamontgomery052013@gmail.com

FILED

2017 JAN 19 AM 8:19

JOHN PRATT
CLERK OF DISTRICT COURT
MONTGOMERY COUNTY, KS

BY _____

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 2017-CR- 22 I (C)

Paul Thomas Hurley,
710 Keith Blvd
Coffeyville, KS 67337

Defendant.

AGENCY: Montgomery County Sheriff #16-938

COMPLAINT / INFORMATION

COMES NOW the State of Kansas, by and through Lisa D Montgomery, duly qualified and acting Montgomery County, Assistant County Attorney, for and on behalf of the State of Kansas alleges and states for its *Complaint/Information* against the defendant, **Paul Thomas Hurley**:

COUNT I

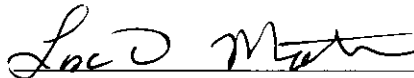
Criminal damage to property; Without consent value \$1000 to \$25,000

That on or about the 11th day of June, 2016, in Montgomery County, Kansas, Paul Thomas Hurley did, by means other than fire or explosive, unlawfully, feloniously and knowingly damage, deface, destroy or substantially impair the use of property, to-wit: Damage to Harley Davidson from being pushed over, in which another, Richard Dwayne Plowman, has an interest, without the consent of said other person, said damage being more than \$1,000 but less than 25,000, all in violation of K.S.A. 21-5813(a)(1)(C)(2). Criminal Damage to Property, a severity level 9 nonperson felony. (Penalty: From a minimum of 7 months to a maximum of 17 months in prison and a fine of up to \$100,000; Postrelease supervision term of 12 months. K.S.A. 21-6804, K.S.A. 21-6611, K.S.A. 22-3717, and amendments thereto.)

All of the said acts then and there committed being contrary to the statutes in such cases made and provided and being against the peace and dignity of the State of Kansas.

WITNESSES:

Christopher Bishop
Gregory Glen Gains
Richard Dewayne Plowman

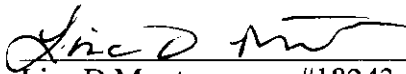


Lisa D Montgomery, #18243
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lisamontgomery052013@gmail.com

VERIFICATION

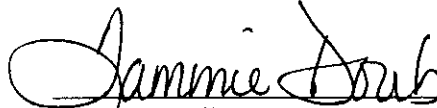
STATE OF KANSAS)
) ss.
COUNTY OF MONTGOMERY)

Lisa D Montgomery, duly qualified and acting Assistant County Attorney, authorized and empowered to prosecute for and on behalf of the State of Kansas, Montgomery County, of lawful age, being first duly sworn on oath deposes and states that the matters and things set forth and contained in the above and foregoing *Complaint/Information* are true and correct as informed and to the best of my knowledge and belief, so help me God.



Lisa D Montgomery, #18243
Assistant County Attorney

Subscribed and sworn to before me this 18th day of January, 2017.



Notary Public
My term expires:



Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com

FILED

2017 MAR 17 AM 9:09

JENI C. HILL
CLERK OF DISTRICT COURT
MONTGOMERY CO., KS

BY _____

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 2017-CR-000022-I-FE

Paul Thomas Hurley,

710 Keith Blvd

Coffeyville, KS 67337

White/male; DOB: XX/XX/1986

Defendant.

DIVERSION AGREEMENT

This diversion agreement is entered into on this 15th day of March, 2017, by the above-captioned parties with the approval of their attorneys, if any, and shall continue in force and effect for a term of 6 months.

1. I, the Defendant, fully understand and agree to the following:

- a. PH My full name is Paul Thomas Hurley.
- b. PM My full name at the time the information or complaint in this case was filed was:
Paul Thomas Hurley.
- c. PH I have been charged with the following crime(s), filed in the District Court of Montgomery County, Kansas, via *Complaint* or *Complaint/Information* on 1/18/2017:

Any cash bond posted by me shall be applied to the balance due. The cash bond cannot be used to pay the diversion cost or court costs. Any remaining cash bond, after being applied to amounts due, will be returned to me.

- j. PM I acknowledge and understand that if this diversion is revoked, the criminal proceedings on the original charge(s) will be resumed and the clauses waiving all rights to a speedy trial, all rights to preliminary examinations and hearings, and all rights to a trial by jury, will remain in effect. I acknowledge and understand that *Addendum A Stipulation of Facts* and all stipulations set forth in paragraphs 2(h) and 2(i) will remain in effect. I acknowledge and understand that if the Court finds me guilty, the Court may impose any and all fines and/or incarceration as allowed by law for the original charge(s).
- k. PM I agree that the County Attorney's Office shall have thirty (30) days following expiration of this diversion to discover violations of this diversion and to proceed thereon.
- l. _____ **Special Conditions:**

3. The State agrees to do each of the following things:

- a. To suspend prosecution of the captioned case so long as the Defendant continues to fulfill the terms and conditions of the diversion agreement.
- b. To dismiss with prejudice and with costs assessed to the Defendant all charges in the captioned case at the end of the diversionary term upon a satisfactory showing that the Defendant has successfully fulfilled the terms of the diversion agreement.

The parties understand that it is the Defendant's responsibility to provide the County Attorney's Office with any documentation required by this agreement.

The parties understand that if a motion to revoke diversion and reinstate prosecution is filed, the motion to revoke diversion and reinstate prosecution and a notice of hearing will be mailed directly to the last address provided by the Defendant. It is the Defendant's responsibility to contact his or her attorney in reference to the motion to revoke diversion and reinstate prosecution.

The parties understand and agree that should any section, subsection, sentence, clause, phrase, provision, or exemption of these rules and regulations be declared invalid for any reason, such invalidity shall not affect the remaining portions or provisions contained within the diversion agreement.

By signing this agreement, I, the Defendant, agree, affirm and stipulate that I have read the entire diversion agreement, understand all of its terms and their meaning, including the rights I am

Count 1

Criminal damage to property; Without consent value \$1000 to \$25,000

- d. ✓PH I have the right to demand a prompt, full and complete evidentiary hearing and trial in this matter.
- e. PH I have been advised of the right to counsel and given ample time to consult with an attorney before entering this agreement and, if choosing to represent myself, am voluntarily waiving the right to have an attorney represent me concerning this agreement.
- f. PH The prosecution of this matter is being deferred pursuant to K.S.A. 22-2906, *et seq.*, and the policies and guidelines of the County Attorney, which have been provided to me in writing and which I have been given ample time to read.
- g. PH I understand that diversions of certain crimes may be used to enhance the severity level of certain crimes if I am charged with them in the future.
- h. PH I understand that if I am not a citizen of the United States a diversion or conviction for a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.
- i. PH I understand that I may be eligible for expungement of this diversion pursuant to K.S.A. 21-6614, and amendments thereto.

2. I, the Defendant, agree to do each of the following things:

- a. PH I waive all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment.
- b. PH I waive all rights under the law or the constitution of Kansas or of the United States to preliminary examinations and hearings.
- c. PH I waive all rights under the law or the constitution of Kansas or of the United States to a speedy trial.
- d. PH I waive all rights under the law or the constitution of Kansas or of the United States to a trial by jury.
- e. PH I agree not to violate the laws of the United States, of any State, or of any political subdivision of any State during the term of this diversion agreement. Traffic infractions shall not be considered violations of the law.
- f. PH I agree to notify my attorney and the County Attorney in writing within seven (7) days of any change in address, telephone number or place of employment and not to move from the State without the prior approval of the County Attorney's Office. Any

mail addressed to me at my last known address returned to the County Attorney's Office or to the District Court as not deliverable, no forwarding address on file, etc., will be considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.

- g. PH I stipulate that I am the individual named in the Information, and that the offense(s) charged occurred in Montgomery County, Kansas. I agree that the facts as set forth in *Addendum A Stipulation of Facts* are true and accurate. I further stipulate to the facts as contained in the official report by:

Montgomery County Sheriff, Report Number: 16-938 ,
written witness statements, and any lab or other test results prepared or taken in connection with this case as being true and accurate. I am agreeing to and waiving my right to require the State to call witnesses to testify, and that I am waiving my rights under the law or the constitution of Kansas or of the United States to confront those witnesses or to call witnesses to testify on my behalf.

- h. PH I agree and understand that violation of the terms and conditions of this agreement will result in revocation of diversion and this matter proceeding to trial based solely upon the *Complaint* or *Complaint/Information*, *Addendum A Stipulation of Facts*, official reports identified above, written witness statements, lab or other test results, and any other evidence associated with this case. I stipulate that the previously described items shall be admitted into evidence without objection by me and without further foundation. I further stipulate that any trial on this matter and any proceedings on appeal shall be conducted solely on the stipulations contained herein, and that I will not be entitled to present additional evidence at the trial of the matter or any proceedings on appeal.

- i. PH I agree to pay as follows:

Payment of Diversion cost - All Payments must be submitted to the Clerk of the Montgomery County District Court; the Court accepts cash, money orders or cashier's checks.

I shall pay as follows:

Restitution:

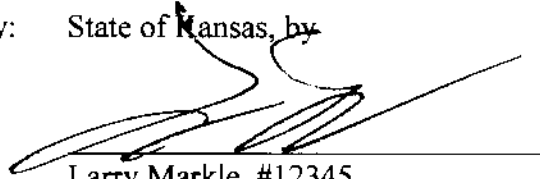
	\$3787.15 – Insurance Co
	<u>1,000.00</u> – Richard Plowman
Total:	\$ 4,787.15
Diversion fee:	100.00
Court costs:	193.00
Fingerprint fee:	<u>45.00</u>
Total:	\$5,125.15

All costs and fees will be paid at the time of signing the diversion agreement. The diversion agreement will not be processed until all monies due are paid into the District Court.

waiving and the obligations I am assuming, and that my decision to enter this agreement is my own free and voluntary act.

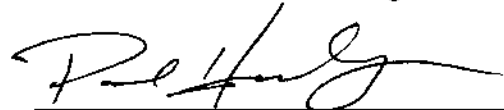
Dated this 15th day of March, 2017.

By: State of Kansas, by



Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230

I have read this diversion agreement, fully understand its contents, and agree to its provisions.



Paul Thomas Hurley, Defendant

Current Address: 4102 CR 2800
Coffeyville KS, 67337

Telephone: (620) 515-1449

Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com

FILED

2016 MAR 16 PM 2:43

JOHN P. RYAN
CLERK OF DISTRICT COURT
MONTGOMERY CO., KS

BY _____

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 2016-CR- 162 I (C)

Jovan Kaheel Barksdale,
500 W 9th St, CCC Dorms
Coffeyville, KS 67337

Defendant.

AGENCY: Coffeyville Police Department #16-1833

COMPLAINT / INFORMATION

COMES NOW the State of Kansas, by and through Larry Markle, duly qualified and acting Montgomery County, County Attorney, for and on behalf of the State of Kansas alleges and states for its *Complaint/Information* against the defendant, **Jovan Kaheel Barksdale**:

COUNT I

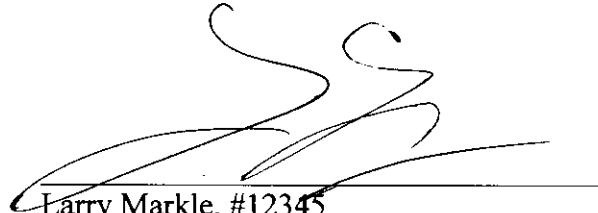
Attempted criminal damage to property; Without consent value \$1000 to \$25,000

That on or about the 2nd day of March, 2016, in Montgomery County, Kansas, Jovan Kaheel Barksdale did, by means other than fire or explosive, unlawfully, feloniously and knowingly attempt to damage, deface, destroy or substantially impair the use of property, to-wit: Nissan, in which another, Bailie J Chambers, has an interest, without the consent of said other person, but failed in the perpetration thereof or was prevented or intercepted in exucting the crime, and said damage being more than \$1,000 but less than 25,000, all in violation of K.S.A. 21-5813(a)(1)(C)(2). Criminal Damage to Property, a severity level 10 nonperson felony. (Penalty: From a minimum of 5 months to a maximum of 13 months in prison and a fine of up to \$100,000; Postrelease supervision term of 12 months. K.S.A. 21-6804, K.S.A. 21-6611, K.S.A. 22-3717, and amendments thereto.)

All of the said acts then and there committed being contrary to the statutes in such cases made and provided and being against the peace and dignity of the State of Kansas.

WITNESSES:

Jason Davis
Bailie J Chambers
Brandon Wayne Black
Dawon Cummings
Christina Moore

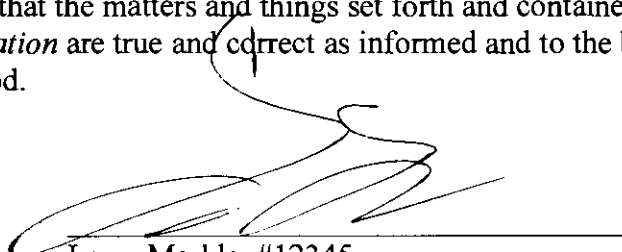


Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com

VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF MONTGOMERY)

Larry Markle, duly qualified and acting County Attorney, authorized and empowered to prosecute for and on behalf of the State of Kansas, Montgomery County, of lawful age, being first duly sworn on oath deposes and states that the matters and things set forth and contained in the above and foregoing *Complaint/Information* are true and correct as informed and to the best of my knowledge and belief, so help me God.

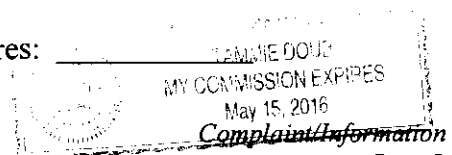


Larry Markle, #12345
County Attorney

Subscribed and sworn to before me this 16th day of March, 2016.



Notary Public
My term expires: _____



FILED

IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS
SITTING AT THE DISTRICT COURT

STATE OF KANSAS,

JON PRATT
CLERK OF DISTRICT COURT
MONTGOMERY CO. KS

Plaintiff,

vs.

BY JS No. 016-CR162-IC

JOVAN KAHEEL BARKSDALE,

Defendant.

DIVERSION AGREEMENT
PRE-TRIAL RELEASE AND GENERAL CONTINUANCE ORDER

NOW on this 17th day of November 2016, Defendant appears in person and with counsel, Daniel H. Lampson. The State appears by David Maslen, Assistant County Attorney. By joint agreement, the State agrees to place the defendant on diversion of prosecution and the defendant agrees to continue the case for a period of six (6) months.

THE COURT, being fully advised in the premises, finds that the defendant was charged on the 16th day of March 2016, with the offense of Felony Attempted Criminal Damage to Property as defined in K.S.A. 21-5813(a)(1)(c)(2) and K.S.A. 21-5301(a); and that an Amended Complaint/Information has been filed herein alleging Misdemeanor Criminal Damage to Property as defined in K.S.A. 21-5813(a)(1)(c)(3), and the misdemeanor charge is in full force and effect.

THE COURT FURTHER FINDS THAT:

1. The defendant is a Black male, his date of birth is 09/**/199*, and his Social Security number is ***-**-7474.
2. The defendant has voluntarily waived his right to a speedy trial with advice of counsel.
3. The defendant stipulates to the factual basis for the

charges as set forth in the Amended Complaint/Information and supporting Affidavit.

4. The defendant understands that the State must prove him guilty beyond a reasonable doubt and that he has a right to trial.

5. The defendant understands that during the period of diversion of prosecution, the charge pending against him will remain in full force and effect and that the said matter may be set for trial prior to the end of the diversion period upon termination of the agreement by any party to this agreement.

6. That upon successful completion of the diversion period, the Complaint will be dismissed with prejudice by the State of Kansas.

IT IS THEREFORE BY THE COURT ORDERED that said defendant be, and is hereby, released pending trial or disposition for a period of six (6) months, conditioned upon the successful completion of the diversionary program and upon the following conditions, to-wit:

1. That he refrains from violating any of the laws of the United States or of any state, or ordinances of any city or town.

2. That he report to this office or any other person, at any time that he may be requested to do so by this office.

3. That he conduct himself at all times as a law abiding citizen.

4. That he notify the County Attorney's office of his current address or any change of address.

5. That he pay the costs of the action in the amount of \$158.00 court costs, a \$300.00 diversion fee, \$175.00 court


appointed attorney's fees, and the statutory finger print fee of \$45.00. Said costs, assessments and fees are to be paid in full at the time of the filing of the Diversion by money order or other certified funds payable to the Clerk of the District Court.

Violation of any of the conditions of this supervision may result in revocation or modification of this diversion program. You will be furnished with notice, at your last known address as shown in our files from your most recent reporting document, specifying the conditions of your program which you have violated. The County Attorney may release you from supervision at any time.

The Court or the defendant hereby reserves the right to terminate this agreement for cause at any time prior to the successful completion of the term of the diversion program and demand the matter be set immediately for trial.


APPROVED BY:


David Maslen #11096
Assistant COUNTY ATTORNEY


Jovan Kaheel Barksdale
Defendant


Daniel H. Lampson
ATTORNEY FOR DEFENDANT

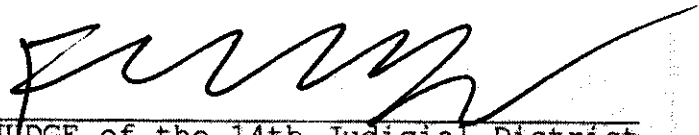
I, Jovan Kaheel Barksdale, the above named defendant, have read the above order and know the contents thereof and I hereby agree to comply with the conditions as set forth therein.



Jovan Kaheel Barksdale
Defendant

ORDER OF CONTINUANCE

This matter is continued by the Court until further order.



JUDGE of the 14th Judicial District
of the State of Kansas

Exhibit 13

2016 FEB -3 PM 12: 02

[Handwritten signature]

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas.

Plaintiff,

VS.

Case No. 2016-CR-65 I

Rockiel Donnell Dungey,

408 S. 18th St

Independence, KS 67301

Defendant.

AGENCY: Independence Police Department #16-10

COMPLAINT / INFORMATION

COMES NOW the **State of Kansas**, by and through Larry Markle, duly qualified and acting Montgomery County, County Attorney, for and on behalf of the State of Kansas alleges and states for its *Complaint/Information* against the defendant, **Rockiel Donnell Dungey**:

COUNT I

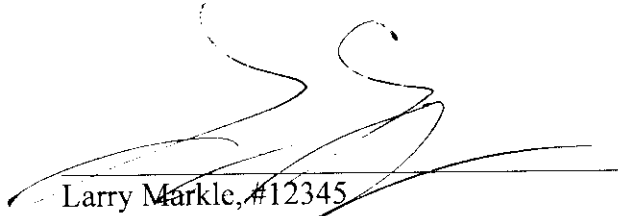
Attempted criminal use of weapons; Shotgun barrel < 18 inches or automatic trigger

That on or about the 2nd day of January, 2016, in Montgomery County, Kansas, Rockiel Donnell Dungey, then and there being present did unlawfully, feloniously and knowingly attempt to purchase/possess a shotgun with a barrel less than 18 in length, whether Rockiel Donnell Dungey knew or had reason to know the length of the barrel. In violation of K.S.A. 21-6301(a)(5) and 21-5301, Criminal Use of Weapons, a severity level 10 nonperson felony. (Penalty: from a minimum of 5 months to a maximum of 13 months in prison and a fine of up to \$100,000; Postrelease supervision term of 12 months)

All of the said acts then and there committed being contrary to the statutes in such cases made and provided and being against the peace and dignity of the State of Kansas.

WITNESSES:

Lisa C. Helkenberg
Ty LuPardus
Dustin Taylor
Lacresha Dungey
Raquel Danielle Dungey

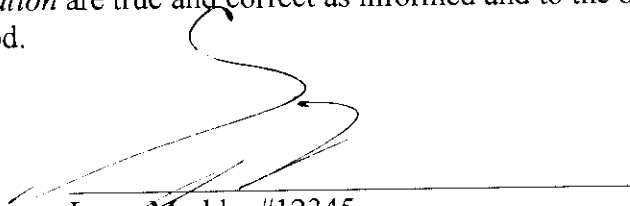


Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com

VERIFICATION

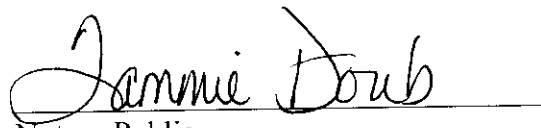
STATE OF KANSAS)
) ss.
COUNTY OF MONTGOMERY)

Larry Markle, duly qualified and acting County Attorney, authorized and empowered to prosecute for and on behalf of the State of Kansas, Montgomery County, of lawful age, being first duly sworn on oath deposes and states that the matters and things set forth and contained in the above and foregoing *Complaint/Information* are true and correct as informed and to the best of my knowledge and belief, so help me God.



Larry Markle, #12345
County Attorney

Subscribed and sworn to before me this 3rd day of February, 2016.



Jammie Doub
Notary Public
My term expires: _____

Timothy J. Grillot, #11415
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: timgrillotaca@gmail.com

FILED

2017 FEB -7 AM 11:57

CLERK OF DISTRICT COURT
MONTGOMERY CO. KS

BY: 

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 2016-CR-000065-I-FE

Rockiel Donnell Dungey,

408 S. 18th St

Independence, KS 67301

black/male; DOB: XX/XX/1970

Defendant.

DIVERSION AGREEMENT

This diversion agreement is entered into on this 20th day of JANUARY, 2017, by the above-captioned parties with the approval of their attorneys, if any, and shall continue in force and effect for a term of 12 months.

1. I, the Defendant, fully understand and agree to the following:

- a. Rd My full name is ROCKIEL DONNELL DUNGEY.
- b. Rd My full name at the time the information or complaint in this case was filed was:
ROCKIEL DONNELL DUNGEY.
- c. Rd I have been charged with the following crime(s), filed in the District Court of Montgomery County, Kansas, via *Complaint* or *Complaint/Information* on 2/2/2016:

Count 1

Criminal use of weapons; Shotgun barrel < 18 inches or automatic trigger

- d. Ruf I have the right to demand a prompt, full and complete evidentiary hearing and trial in this matter.
 - e. Ruf I have been advised of the right to counsel and given ample time to consult with an attorney before entering this agreement and, if choosing to represent myself, am voluntarily waiving the right to have an attorney represent me concerning this agreement.
 - f. Ruf The prosecution of this matter is being deferred pursuant to K.S.A. 22-2906, *et seq.*, and the policies and guidelines of the County Attorney, which have been provided to me in writing and which I have been given ample time to read.
 - g. Ruf I understand that diversions of certain crimes may be used to enhance the severity level of certain crimes if I am charged with them in the future.
 - h. Ruf I understand that if I am not a citizen of the United States a diversion or conviction for a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.
 - i. Ruf I understand that I may be eligible for expungement of this diversion pursuant to K.S.A. 21-6614, and amendments thereto.
2. I, the Defendant, agree to do each of the following things:
- a. Ruf I waive all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment.
 - b. Ruf I waive all rights under the law or the constitution of Kansas or of the United States to preliminary examinations and hearings.
 - c. Ruf I waive all rights under the law or the constitution of Kansas or of the United States to a speedy trial.
 - d. Ruf I waive all rights under the law or the constitution of Kansas or of the United States to a trial by jury.
 - e. Ruf I agree not to violate the laws of the United States, of any State, or of any political subdivision of any State during the term of this diversion agreement. Traffic infractions shall not be considered violations of the law.
 - f. Ruf I agree to notify my attorney and the County Attorney in writing within seven (7) days of any change in address, telephone number or place of employment and not to move from the State without the prior approval of the County Attorney's Office. Any mail addressed to me at my last known address returned to the County Attorney's Office

or to the District Court as not deliverable, no forwarding address on file, etc., will be considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.

- g. Ruf I stipulate that I am the individual named in the Information, and that the offense(s) charged occurred in Montgomery County, Kansas. I agree that the facts as set forth in *Addendum A Stipulation of Facts* are true and accurate. I further stipulate to the facts as contained in the official report by:

Independence Police Department, Report Number: 16-10 ,
written witness statements, and any lab or other test results prepared or taken in connection with this case as being true and accurate. I am agreeing to and waiving my right to require the State to call witnesses to testify, and that I am waiving my rights under the law or the constitution of Kansas or of the United States to confront those witnesses or to call witnesses to testify on my behalf.

- h. Ruf I agree and understand that violation of the terms and conditions of this agreement will result in revocation of diversion and this matter proceeding to trial based solely upon the *Complaint* or *Complaint/Information*, *Addendum A Stipulation of Facts*, official reports identified above, written witness statements, lab or other test results, and any other evidence associated with this case. I stipulate that the previously described items shall be admitted into evidence without objection by me and without further foundation. I further stipulate that any trial on this matter and any proceedings on appeal shall be conducted solely on the stipulations contained herein, and that I will not be entitled to present additional evidence at the trial of the matter or any proceedings on appeal.

- i. Ruf I agree to pay as follows:

Payment of Diversion cost - All Payments must be submitted to the Clerk of the Montgomery County District Court; the Court accepts cash, money orders or cashier's checks.

I shall pay as follows:

Diversion fee:	\$300.00
Court costs:	\$193.00
Fingerprint fee:	\$ 45.00
Total:	\$538.00

All costs and fees will be paid at the time of signing the diversion agreement. The diversion agreement will not be processed until all monies due are paid into the District Court.

Any cash bond posted by me shall be applied to the balance due. The cash bond cannot be used to pay the diversion cost or court costs. Any remaining cash bond, after being applied to amounts due, will be returned to me.

- j. Ref I acknowledge and understand that if this diversion is revoked, the criminal proceedings on the original charge(s) will be resumed and the clauses waiving all rights to a speedy trial, all rights to preliminary examinations and hearings, and all rights to a trial by jury, will remain in effect. I acknowledge and understand that *Addendum A Stipulation of Facts* and all stipulations set forth in paragraphs 2(h) and 2(i) will remain in effect. I acknowledge and understand that if the Court finds me guilty, the Court may impose any and all fines and/or incarceration as allowed by law for the original charge(s).
- k. Ref I agree that the County Attorney's Office shall have thirty (30) days following expiration of this diversion to discover violations of this diversion and to proceed thereon.

l. _____ **Special Conditions:**

3. The State agrees to do each of the following things:

- a. To suspend prosecution of the captioned case so long as the Defendant continues to fulfill the terms and conditions of the diversion agreement.
- b. To dismiss with prejudice and with costs assessed to the Defendant all charges in the captioned case at the end of the diversionary term upon a satisfactory showing that the Defendant has successfully fulfilled the terms of the diversion agreement.

The parties understand that it is the Defendant's responsibility to provide the County Attorney's Office with any documentation required by this agreement.

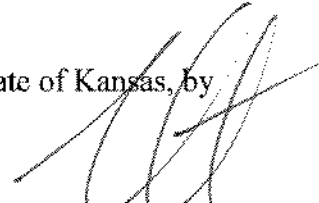
The parties understand that if a motion to revoke diversion and reinstate prosecution is filed, the motion to revoke diversion and reinstate prosecution and a notice of hearing will be mailed directly to the last address provided by the Defendant. It is the Defendant's responsibility to contact his or her attorney in reference to the motion to revoke diversion and reinstate prosecution.

The parties understand and agree that should any section, subsection, sentence, clause, phrase, provision, or exemption of these rules and regulations be declared invalid for any reason, such invalidity shall not affect the remaining portions or provisions contained within the diversion agreement.

By signing this agreement, I, the Defendant, agree, affirm and stipulate that I have read the entire diversion agreement, understand all of its terms and their meaning, including the rights I am waiving and the obligations I am assuming, and that my decision to enter this agreement is my own free and voluntary act.

Dated this 20 day of JANUARY 2017.

By: State of Kansas, by



Timothy J. Grillot, #11415
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230

I have read this diversion agreement, fully understand its contents, and agree to its provisions.



Rockiel Donnell Dungey, Defendant

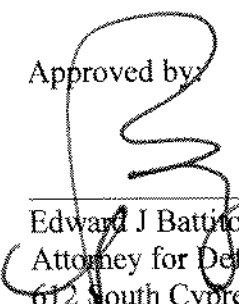
Current Address:

408 S. 18TH ST.
INDEPENDENCE, KS 67301

Telephone:

620-330-0160

Approved by:



Edward J Battitoni, #14620
Attorney for Defendant
612 South Cypress Street
Cherokee, KS 66724
Phone: (620) 457-8008
FAX: (620) 457-8007
Email: ebattitoni@gmail.com
ATTORNEY FOR DEFENDANT

Exhibit 14

FILED

Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com

2015 MAR 17 PM 12:25

CLERK OF DISTRICT COURT
MONTGOMERY CO. KS
BY DS

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 15CR143 I

Sonya Corralie Harrison,

1330 SW 10th St
Parsons, KS 67357

Defendant.

AGENCY: Montgomery County Sheriff #15-315

COMPLAINT / INFORMATION

COMES NOW the State of Kansas, by and through Larry Markle, duly qualified and acting Montgomery County County Attorney, for and on behalf of the State of Kansas alleges and states for its *Complaint/Information* against the defendant, **Sonya Corralie Harrison**:

COUNT I

Distribute heroin/certain stimulants; > 100 grams

That on or about the 5th day of March, 2015, in Montgomery County, Kansas, Sonya Corralie Harrison, being a person 18 or more years of age, then and there being present did unlawfully, feloniously cultivate, distribute or possess with the intent to distribute Methamphetamine, a Schedule II controlled substance as designated in K.S.A. 65-4107(d)(3) and amendments thereto.

In violation of K.S.A. 2011 Supp. 21-5705(a)(1)(c)(1)(D), Cultivation, Distribution or Possession with Intent to Distribute a Controlled Substance, a drug severity level 1 felony. (> 100 g) (Penalty: from a minimum of 138 months to a maximum of 204 months in prison and a fine of up to \$500,000; Postrelease supervision term of 36 months)

COUNT II

Possession of certain depressants

That on or about the 5th day of March, 2015, in Montgomery County, Kansas, Sonya Corralie Harrison, then and there being present did unlawfully, possess a depressant drug, to wit: Xanax, a schedule IV drug as listed in K.S.A. 65-41@@ and amendments thereto. In violation of K.S.A. 21-5706(b)(1), Unlawful Possession of a Controlled Substance, a class A nonperson misdemeanor. (Penalty: maximum of 12 months in jail and a fine of up to \$2,500)

COUNT III

Possession of Drug Paraphernalia: Use/possess w/intent to use into human body

That on or about the 5th day of March, 2015, in Montgomery County, Kansas, Sonya Corralie Harrison, did unlawfully use, possess, or have under the defendant's control with intent to use, drug paraphernalia, to wit: blue and orange glass smoking pipe containing burnt residue; cellophane cigarette package wrapper containing a crystal like substance, used to store, contain, conceal, ingest, inhale, injecting or otherwise introduce a controlled substance into the human body, all in violation of K.S.A. 21-5709(b)(2). Possession of Drug Paraphernalia, a Class A nonperson misdemeanor. (Maximum penalty: One year in county jail and a fine of up to \$2500. K.S.A. 21-6602 and K.S.A. 21-6611.)

COUNT IV

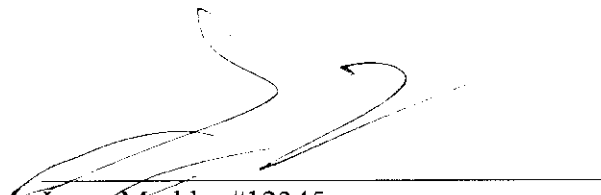
Criminal use of weapons; Poss of firearm by person addicted/use contr sub

That on or about the 5th day of March, 2015, in Montgomery County, Kansas, Sonya Corralie Harrison, then and there being present did unlawfully and knowingly possess a firearm and Sonya Corralie Harrison is both addicted to and an unlawful user of a controlled substance. In violation of K.S.A. 2011 Supp. 21-6301(a)(10), Criminal Use of Weapons, a class B nonperson misdemeanor. (Maximum penalty: six months in county jail and a fine of up to \$1000)

All of the said acts then and there committed being contrary to the statutes in such cases made and provided and being against the peace and dignity of the State of Kansas.

WITNESSES:

Jeremy Hunsucker
Ian Matthew Hurst
Rickie Long
Willie Wilkinson
Kyle Cole Harris



Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office

2015-CR-000143-I-FE
Subpoena

Signature
Sheriff or Process Server of Montgomery
County, State of Kansas

Timothy J. Grillo, #11415
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620)330-1020
FAX: (620) 331-7230
Email: timgrillotaca@gmail.com

FILED

2017 MAY 22 AM 11:06

JONI PRATT
CLERK OF DISTRICT COURT
MONTGOMERY CO. KS

BY 

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 2015-CR-000143-I-FE

Sonya Corralie Harrison,
3146 N Pennsylvania Ave, Apt 14
Parsons, KS 67357
White/female; DOB: XX/XX/1986
Defendant.

DIVERSION AGREEMENT

This diversion agreement is entered into on this ____ day of _____, 2017, by the above-captioned parties with the approval of their attorneys, if any, and shall continue in force and effect for a term of 12 months.

1. I, the Defendant, fully understand and agree to the following:

- a. ☒ My full name is Sonya Corralie Harrison.
- b. ☒ My full name at the time the amended information or amended complaint in this case was filed was: Sonya Corralie Harrison.
- c. ☒ I have been charged with the following crime(s), filed in the District Court of Montgomery County, Kansas, via Amended Complaint or Amended Complaint/Information on 3/16/2015:

Count 1

Possession of stimulant
(Attempt)

- d. ☒ I have the right to demand a prompt, full and complete evidentiary hearing and trial in this matter.
- e. ☒ I have been advised of the right to counsel and given ample time to consult with an attorney before entering this agreement and, if choosing to represent myself, am voluntarily waiving the right to have an attorney represent me concerning this agreement.
- f. ☒ The prosecution of this matter is being deferred pursuant to K.S.A. 22-2906, *et seq.*, and the policies and guidelines of the County Attorney, which have been provided to me in writing and which I have been given ample time to read.
- g. ☒ I understand that diversions of certain crimes may be used to enhance the severity level of certain crimes if I am charged with them in the future.
- h. ☒ I understand that if I am not a citizen of the United States a diversion or conviction for a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.
- i. ☒ I understand that I may be eligible for expungement of this diversion pursuant to K.S.A. 21-6614, and amendments thereto.
2. I, the Defendant, agree to do each of the following things:
- a. ☒ I waive all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment.
- b. ☒ I waive all rights under the law or the constitution of Kansas or of the United States to preliminary examinations and hearings.
- c. ☒ I waive all rights under the law or the constitution of Kansas or of the United States to a speedy trial.
- d. ☒ I waive all rights under the law or the constitution of Kansas or of the United States to a trial by jury.

- e. ✓ I agree not to violate the laws of the United States, of any State, or of any political subdivision of any State during the term of this diversion agreement. Traffic infractions shall not be considered violations of the law.
- f. ✓ I agree to notify my attorney and the County Attorney in writing within seven (7) days of any change in address, telephone number or place of employment and not to move from the State without the prior approval of the County Attorney's Office. Any mail addressed to me at my last known address returned to the County Attorney's Office or to the District Court as not deliverable, no forwarding address on file, etc., will be considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.
- g. ✓ I stipulate that I am the individual named in the Information, and that the offense(s) charged occurred in Montgomery County, Kansas. I agree that the facts as set forth in *Addendum A Stipulation of Facts* are true and accurate. I further stipulate to the facts as contained in the official report by:
Montgomery County Sheriff, Report Number: 15-315 ,
written witness statements, and any lab or other test results prepared or taken in connection with this case as being true and accurate. I am agreeing to and waiving my right to require the State to call witnesses to testify, and that I am waiving my rights under the law or the constitution of Kansas or of the United States to confront those witnesses or to call witnesses to testify on my behalf.
- h. ✓ I agree and understand that violation of the terms and conditions of this agreement will result in revocation of diversion and this matter proceeding to trial based solely upon the ~~Complaint~~^{Amended} or ~~Complaint/Information~~^{Amended}, *Addendum A Stipulation of Facts*, official reports identified above, written witness statements, lab or other test results, and any other evidence associated with this case. I stipulate that the previously described items shall be admitted into evidence without objection by me and without further foundation. I further stipulate that any trial on this matter and any proceedings on appeal shall be conducted solely on the stipulations contained herein, and that I will not be entitled to present additional evidence at the trial of the matter or any proceedings on appeal.
- i. ✓ I agree to pay as follows:

Payment of Diversion cost - All Payments must be submitted to the Clerk of the Montgomery County District Court; the Court accepts cash, money orders or cashier's checks.

I shall pay as follows:

Diversion fee:	\$300.00
Court costs:	\$193.00
Fingerprint fee:	<u>\$ 45.00</u>
Total:	\$538.00

All costs and fees will be paid at the time of signing the diversion agreement. The diversion agreement will not be processed until all monies due are paid into the District Court.

Any cash bond posted by me shall be applied to the balance due. The cash bond cannot be used to pay the diversion cost or court costs. Any remaining cash bond, after being applied to amounts due, will be returned to me.

- j. ☒ I acknowledge and understand that if this diversion is revoked, the criminal proceedings on the original charge(s) will be resumed and the clauses waiving all rights to a speedy trial, all rights to preliminary examinations and hearings, and all rights to a trial by jury, will remain in effect. I acknowledge and understand that *Addendum A Stipulation of Facts* and all stipulations set forth in paragraphs 2(h) and 2(i) will remain in effect. I acknowledge and understand that if the Court finds me guilty, the Court may impose any and all fines and/or incarceration as allowed by law for the original charge(s).
- k. ☒ I agree that the County Attorney's Office shall have thirty (30) days following expiration of this diversion to discover violations of this diversion and to proceed thereon.
- l. ☒ **Special Conditions:**

3. The State agrees to do each of the following things:

- a. To suspend prosecution of the captioned case so long as the Defendant continues to fulfill the terms and conditions of the diversion agreement.
- b. To dismiss with prejudice and with costs assessed to the Defendant all charges in the captioned case at the end of the diversionary term upon a satisfactory showing that the Defendant has successfully fulfilled the terms of the diversion agreement.

The parties understand that it is the Defendant's responsibility to provide the County Attorney's Office with any documentation required by this agreement.

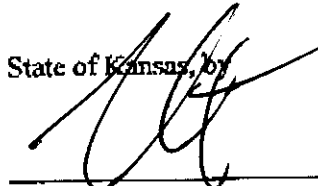
The parties understand that if a motion to revoke diversion and reinstate prosecution is filed, the motion to revoke diversion and reinstate prosecution and a notice of hearing will be mailed directly to the last address provided by the Defendant. It is the Defendant's responsibility to contact his or her attorney in reference to the motion to revoke diversion and reinstate prosecution.

The parties understand and agree that should any section, subsection, sentence, clause, phrase, provision, or exemption of these rules and regulations be declared invalid for any reason, such invalidity shall not affect the remaining portions or provisions contained within the diversion agreement.

By signing this agreement, I, the Defendant, agree, affirm and stipulate that I have read the entire diversion agreement, understand all of its terms and their meaning, including the rights I am waiving and the obligations I am assuming, and that my decision to enter this agreement is my own free and voluntary act.

Dated this _____ day of _____, 2017.

By: State of Kansas, by



Timothy J. Grillo, #11415
Assistant County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230

I have read this diversion agreement, fully understand its contents, and agree to its provisions.


Sonya Corralie Harrison, Defendant

Current Address:

407 W 10th Pkwy, KS 67357

Telephone:

620 687 1089

Approved by:



Katherine Morin, #17674

Attorney for Defendant

PO Box 1343

Pittsburg, KS 66762

Phone: (620) 232-3319

FAX: (620) 232-3312

Email: kmorin@morinlaw.com; jean@morinlaw.com; 875-9653

ATTORNEY FOR DEFENDANT

Exhibit 15

IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KS

FILED

2008 MAY 21 PM 1:13

STATE OF KANSAS

Plaintiff

VS.

Case No. 08 CR 302 I

GORDON ERIC SHAFFER

Defendant

3246 CR 4100

Independence, KS 67301

white/male HAIR: brown EYE: blue

HGT: 507 WGT: 190

AGENCY: Independence Police Department

AGENCY CASE NUMBER: 08000751

COMPLAINT / INFORMATION

Larry Markle, Montgomery County Attorney, for complaint and information against the above shown defendant, alleges and states:

COUNT I-STALKING

That between the 18th day of April, 2008 and the 8th day of May, 2008, in Montgomery County, Kansas, Gordon Eric Shaffer, then and there being did unlawfully, feloniously, intentionally, maliciously and repeatedly follow or harass Alice E Shaffer, and made a credible threat with the intent to place Alice E Shaffer in reasonable fear for their safety, in violation of K.S.A. 21-3438, Stalking.

Severity Level 10 Person Felony. 5 to 13 months. \$100,000 Fine.

COUNT II-VIOLATION OF A PROTECTIVE ORDER

That on or about 18th day of April, 2008, in Montgomery County, Kansas, Gordon Eric Shaffer, then and there being did unlawfully and knowingly or intentionally violate a restraining order issued pursuant to K.S.A. 38-1542, 38-1543, 38-1563 or 60-1607, and amendments thereto, in Montgomery County Case No. 07 DM 112 C, in violation of K.S.A. 21-3843(a)(3), Violation of a Protective Order.

Class A Person Misdemeanor. 1 Year. \$2500 Fine.

COUNT III-CRIMINAL TRESPASS

That on or about 18th day of April, 2008, in Montgomery County, Kansas, Gordon Eric Shaffer,

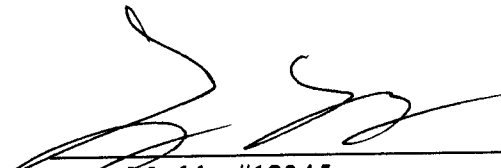
[] County Attorney Copy [] Defense Copy [] Defendant Copy

then and there being present did unlawfully and knowing he/she was not authorized or privileged to do so, enter or remain upon land located at 501 N Spruce, Independence; and in defiance of an order not to enter or to leave said premises or property which was personally communicated to the defendant by the owner of said property or other authorized person, in violation of K.S.A. 21-3721(a)(1)(A), Criminal Trespass.

Class B Nonperson Misdemeanor. 6 months. \$500 Fine.

WITNESSES:

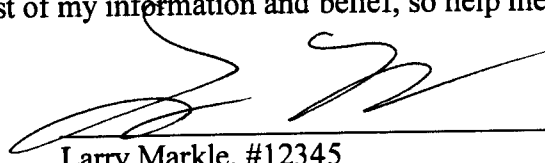
Derek L. Bryant,
William (Bill) R. Knight,
Alice E Shaffer,
Michael Thomas Kane Jr,
Eisenhower Elementary,



Larry Markle, #12345
Montgomery County Attorney
ATTORNEY FOR PLAINTIFF


STATE OF KANSAS, COUNTY OF MONTGOMERY, ss:

I, Larry Markle, do solemnly swear, that the matters set forth in the within complaint/information are true to the best of my information and belief, so help me God.



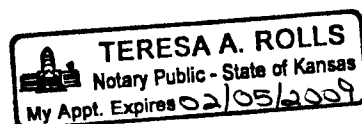
Larry Markle, #12345
Montgomery County Attorney

Subscribed and sworn to before me this 20th day of May 2008.



NOTARY PUBLIC

My Commission Expires:



☐ County Attorney Copy ☐ Defense Copy ☐ Defendant Copy

For Court Use Only

FILED

2006 KANSAS SENTENCING GUIDELINES JOURNAL ENTRY OF JUDGMENT 23 PM 1 24

SECTION I. CASE IDENTIFYING INFORMATION			1. Transaction No. 306320801345	
2. STATE v. GORDON ERIC SHAFFER			3. Court O.R.I. Number KS063025J NANCY L. WILLIAMS CLERK OF DISTRICT COURT MONTGOMERY CO. KS	
5. County Montgomery	6. Court Case Number 08 CR-302 I	7. Sentencing Judge ROGER L. GOSSARD		8. Sentencing Date 12-23-08
9. Type of Counsel <input type="checkbox"/> Appointed <input checked="" type="checkbox"/> Retained <input type="checkbox"/> Self <input type="checkbox"/> Other		10. Type of Trial <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input checked="" type="checkbox"/> Plea	11. Date of Conviction 12-23-08	12. Pre-Trial Status of Offender <input type="checkbox"/> In Custody <input checked="" type="checkbox"/> Released on Bond <input type="checkbox"/> Other Release

SECTION II. CRIMINAL HISTORY CLASSIFICATION			
1. Offender's Overall Criminal History Classification as Found by the Court (please check appropriate box): Non-Drug <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H <input type="checkbox"/> I Drug <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H <input type="checkbox"/> I		2a. Objection to Criminal History? <input type="checkbox"/> Yes <input type="checkbox"/> No	2b. If Yes, By: <input type="checkbox"/> Defendant <input type="checkbox"/> State
		3. Court's Ruling on Objection: <input type="checkbox"/> Criminal history was amended. <input type="checkbox"/> Criminal history was not amended.	

SECTION III. CURRENT CONVICTION INFORMATION			
1. Name of PRIMARY Offense of Conviction: VIOLATION OF A PROTECTIVE ORDER Court No. I Date of Offense BETWEEN 4-19-08 AND 5-8-08	2. K.S.A. Title, Section, Subsection(s): 21-3843(a)(3) <input type="checkbox"/> Attempt <input type="checkbox"/> Conspiracy <input type="checkbox"/> Solicitation	3. Grade of Offense: <input type="checkbox"/> Felony <input checked="" type="checkbox"/> Misdemeanor, Class A <input checked="" type="checkbox"/> Person <input type="checkbox"/> Nonperson	4. Offense Severity Level <input type="checkbox"/> Nondrug <input type="checkbox"/> Drug <input type="checkbox"/> Off-grid <input type="checkbox"/> Nongrid

5. Presumptive Sentencing Range: Standard Aggravated Mitigated ____ _____ _____	(CHECK ONLY ONE) <input type="checkbox"/> Presumptive Prison <input type="checkbox"/> Presumptive Probation <input type="checkbox"/> Border Box <input type="checkbox"/> Mandatory Drug Treatment, (K.S.A. 21-4729, "SB 123") <input type="checkbox"/> Special Rule Applies (see page 2)
---	---

THIS FORM MUST BE ACCOMPANIED BY AN ATTACHED COPY OF THE PRESENTENCE INVESTIGATION FORM. SEE K.S.A. 22-3439.

PLEASE USE A SUPPLEMENTAL PAGE FOR ADDITIONAL OFFENSES OF CONVICTION.

6. SPECIAL RULES APPLICABLE TO SENTENCE, IF ANY	7. "SEX RELATED OFFENSES" and "OTHER QUESTIONS"	8. SENTENCE IMPOSED
<p>1. <input type="checkbox"/> Person Felony Committed With a Firearm – presumed prison. KSA 21-4704(h).</p> <p>2. <input type="checkbox"/> Aggravated Battery of a L.E.O., if criminal history is 6H or more – presumed prison. KSA 21-4704(g).</p> <p>3. <input type="checkbox"/> Aggravated Assault of a L.E.O., if criminal history is 6H or more – presumed prison. KSA 21-4704(g).</p> <p>4. <input type="checkbox"/> Crime Committed for Benefit of a Criminal Street Gang – presumed prison. KSA 21-4704(k).</p> <p>5. <input type="checkbox"/> Persistent Sex Offender if current conviction is presumed prison – double the maximum duration. KSA 21-4704(j).</p> <p>6. <input type="checkbox"/> Felony D.U.I. (third, fourth or subsequent) – nongrid, sentenced pursuant to specific mandatory sentencing requirements of KSA 8-1567, term of imprisonment not to be served in KDOC. KSA 21-4704(i).</p> <p>8. <input type="checkbox"/> Felony Domestic Battery - nongrid, sentenced pursuant to specific mandatory sentencing requirements of KSA 21-112a(b)(3), term of imprisonment not to be served in KDOC. KSA 21-4704(i).</p> <p>9. <input type="checkbox"/> Crime Committed While Incarcerated and Serving a Felony Sentence, or While on Probation, Parole, etc., for a Felony – new sentence consecutive to old pursuant to KSA 21-4608. KSA 21-4603d(f).</p> <p>10. <input type="checkbox"/> Crime Committed While on Felony Bond - new sentence consecutive to old pursuant to KSA 21-4608. KSA 21-4603d(f).</p> <p>11. <input type="checkbox"/> Extended Jurisdiction Juvenile Imposed – both juvenile and adult sentences imposed, adult sentence stayed conditioned on successful completion of juvenile sentence. KSA 38-16,126(a).</p> <p>12. <input type="checkbox"/> Second or Subsequent Manufacture of a Controlled Substance Conviction – presumed prison, twice the maximum duration. KSA 21-4705(e).</p> <p>13. <input type="checkbox"/> Residential Burglary with a Prior Residential, Nonresidential or Aggravated Burglary Conviction – presumed prison. KSA 21-4704(i).</p> <p>15. <input type="checkbox"/> Kansas Securities Act, violation resulting in loss of \$5,000 or more – presumed prison. KSA 17-12a508(a)(5).</p> <p>16. <input type="checkbox"/> Second Forgery, criminal history I – C – nongrid felony, sentenced pursuant to sentencing requirements of KSA 21-310(b)(3), term of imprisonment not in KDOC. Criminal history A or B, - sentenced for severity level 8, NPF. KSA 21-4704(i).</p> <p>17. <input type="checkbox"/> Third or Sub. Forgery, criminal history I – C – nongrid felony, sentenced pursuant to sentencing requirements of KSA 21-310(b)(4), term of imprisonment not in KDOC. Criminal history A or B, - sentenced for severity level 8, NPF. KSA 21-4704(i).</p> <p>19. <input type="checkbox"/> Mortgage Business Act, Second or Subsequent Conviction – presumed prison. KSA 9-2203(c).</p> <p>20. <input type="checkbox"/> Loan Brokers Act, violation resulting in loss of \$25,000 or more – presumed prison. KSA 50-1013(a).</p> <p>21. <input type="checkbox"/> Animal Cruelty; Intentional and Malicious, KSA 21-4310(a)(1) - nongrid felony, sentenced pursuant to specific mandatory sentencing requirements of KSA 21-4310(d)(1), term of imprisonment not to be served in KDOC. KSA 21-4704(i).</p> <p>22. <input type="checkbox"/> Animal Cruelty; Intentional, KSA 21-4310(a)(2-5); Second or subsequent conviction - nongrid felony, sentenced pursuant to specific mandatory sentencing requirements of KSA 21-4310(d)(2), term of imprisonment not to be served in KDOC. KSA 21-4704(i).</p> <p>23. <input type="checkbox"/> Animal Cruelty; Working/Assistance dog - nongrid felony, sentenced pursuant to specific mandatory sentencing requirements of KSA 21-4318(c), term of imprisonment not to be served in KDOC. KSA 21-4704(i).</p> <p>24. <input type="checkbox"/> Aggravated Habitual Sex Offender – Life no parole. K.S.A. 2006 Supp. 21-4642.</p> <p>99. Other:</p>	<p>7a. Was the Crime SEXUALLY MOTIVATED Pursuant to KS Offender Registration Act K.S.A. 22-4902 (c)(14)?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>7b. Was Offender determined by the Court to be an AGGRAVATED HABITUAL SEX OFFENDER? (K.S.A. 2006 Supp. 21-4642.)</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>IF YES, GO TO SUBSECTION Y "Aggravated Habitual Sex Offenders"</p> <p>7c. Is offender being sentenced pursuant to K.S.A. 2006 Supp. 21-4643 where offender is 18 years of age or older and the victim is less than 14 years of age?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>IF YES, GO TO SUBSECTION Z "Child Sex Offenses"</p> <p>7d. Did Offender, as determined by the court, commit the current crime with a deadly weapon?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, offender must register per 2006 SB 506 and K.S.A. 2006 Supp. 22-4902(a)(7).</p> <p>7e. Prior Mandatory Drug Treatment under KSA 21-4729 ("SB 123")?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, number of times:</p>	<p>8a. Guideline Range Imposed:</p> <p><input type="checkbox"/> Standard</p> <p><input type="checkbox"/> Aggravated</p> <p><input type="checkbox"/> Mitigated</p> <p><input type="checkbox"/> Departure – Complete Section IV</p> <p>8b. Prison:</p> <p><input type="checkbox"/> Prison - DOC _____ months</p> <p><input type="checkbox"/> Life Imprisonment (Off-grid Crime)</p> <p><input type="checkbox"/> Life 15 <input type="checkbox"/> Life 20 <input type="checkbox"/> Hard 10</p> <p><input type="checkbox"/> Hard 25 <input type="checkbox"/> Hard 40</p> <p><input type="checkbox"/> Mandatory minimum of greater of Hard 50 years (600 months) or _____ months pursuant to guidelines given offender's criminal history</p> <p><input type="checkbox"/> Death Penalty</p> <p><input type="checkbox"/> Life Imprisonment without Parole</p> <p>Postrelease Supervision Term:</p> <p><input type="checkbox"/> 12 months</p> <p><input type="checkbox"/> 24 months</p> <p><input type="checkbox"/> 36 months</p> <p><input type="checkbox"/> 60 months (sex offense) - Complete Section IV</p> <p><input type="checkbox"/> No Postrelease</p> <p>8c. County Jail:</p> <p><input type="checkbox"/> County Jail _____ days _____ months (For misdemeanor or nongrid felony.)</p> <p><input type="checkbox"/> 3rd D.U.I.</p> <p><input type="checkbox"/> 4th or Subsequent D.U.I. (w/12mon postrelease)</p> <p><input type="checkbox"/> Animal Cruelty</p> <p>8d. Probation:</p> <p>Term of probation:</p> <p>X 12 months <input type="checkbox"/> 18 months <input type="checkbox"/> 24 months</p> <p><input type="checkbox"/> 36 months <input type="checkbox"/> 60 months</p> <p><input type="checkbox"/> Mandatory Drug Treatment for up to 18 months (K.S.A. 21-4729, "SB 123")</p> <p><input type="checkbox"/> Other: _____</p> <p>UNDERLYING JAIL TERM: 12 months</p> <p><input type="checkbox"/> Extended Probation Under K.S.A. 21-4611(c)(5) for: _____ months</p> <p>Probation Supervision to:</p> <p>X Court Services <input type="checkbox"/> Community Corrections</p> <p>County Jail Time Imposed AS A CONDITION OF PROBATION: _____ days</p> <p>Comments:</p> <p>8e. Assignment to Correctional Conservation Camp: _____ days</p> <p><input type="checkbox"/> Men's Camp <input type="checkbox"/> Women's Camp</p> <p>Comments:</p>

SUBSECTION Y. Aggravated Habitual Sex Offenders – K.S.A. 2006 Supp. 21-4642 (PAGE 3)

☐ Imprisonment for life without the possibility of parole; not eligible for parole, probation, assignment to a community correctional services program, conditional release, postrelease supervision, or suspension, modification or reduction of sentence.

SUBSECTION Z. Child Sex Offenses – K.S.A. 2006 Supp. 21-4643

Sentence Imposed for Sex Offenses where offender \geq 18 years of age and victim <14 years of age. **(CHECK ONLY ONE)**

First Offense

☐ Downward departure to guidelines; lifetime postrelease supervision; lifetime electronic monitoring. (Complete Section IV – Departure Information)

☐ Mandatory minimum of greater of Hard 25 years (300 months) or ____ months pursuant to guidelines given offender's criminal history; lifetime postrelease supervision; lifetime electronic monitoring. (See instructions, Appendix D, pages 26-27.)

Second Offense

☐ Mandatory minimum of greater of Hard 40 years (480 months) or ____ months pursuant to guidelines given offender's criminal history; lifetime postrelease supervision; lifetime electronic monitoring. (See instructions, Appendix D, pages 26-27.)

Third Offense – see Aggravated Habitual Sex Offender – Life Imprisonment without parole *under Special Rules*

SECTION IV. DEPARTURE INFORMATION

1. **Type of Departure:** ☐ Downward Durational ☐ Upward Durational
(Check all that apply.) ☐ Downward Dispositional ☐ Upward Dispositional
☐ Postrelease Supervision (up to 60 months for sexually motivated sex offense) – K.S.A. 22-3717(d)(1)(D)(i) ["Sexually motivated" defined in K.S.A. 22-3717(d)(2)]

2. **Reasons Cited as Basis for Departure:**

SECTION V. OTHER CONDITIONS

1. **General/Special Conditions of Probation (ATTACH ORDER OF PROBATION TO THIS JOURNAL ENTRY)**

2. **Costs Ordered:**

Total Restitution \$____ Probation Fee \$25.00

Total Court Costs \$137.00 BIDS Attorney Fee \$____

Total Fines \$____ BIDS Admin. Fee \$____

Fingerprinting Fee \$ 45.00 KBI Lab Fee \$____
(if applicable)

TOTAL COSTS \$_____

3. **Comments:**

SECTION VI. RECAP OF SENTENCE

1. GRAND TOTAL Months of Confinement Imposed: (SUM OF DOC, County Jail [non-grid offenses] or Underlying Prison Term): **12 MONTHS**

KDOC term:

County Jail term:

Underlying jail term: **12 MONTHS**

4. Prior Case(s) to Which the Current Sentence is to Run Concurrent or Consecutive (include Case No., County of Conviction, and Sentence Length, and State Whether Concurrent or Consecutive):

2. Probation Term Imposed (select one):

☒ 12 months ☐ 18 months ☐ 24 months

☐ 36 months ☐ 60 months

☐ Other _____

☐ Extended Period Under

K.S.A. 21-4611(c)(5) for: _____ months

☐ Mandatory Drug Treatment

K.S.A. 21-4729, ("SB 123")

3. Postrelease Supervision Term:

☐ 12 months ☐ 24 months

☐ 36 months ☐ 60 months

☐ No Postrelease

☐ Lifetime Postrelease - for Sexually Violent crimes pursuant to K.S.A. 2006 Supp. 22-3717(d)(1)(G).

☐ Lifetime Electronic Monitoring - for Child Sex Offenses pursuant to K.S.A. 2006 Supp. 22-3717(u).

5. Sentence Begins Date

Sentencing Date: **12-23-08**

Days of Jail Credit Earned: (attach additional pages if necessary)

From: 5-8-08 To: 5-13-08 = 5 Days

From: _____ To: _____ = _____ Days

From: _____ To: _____ = _____ Days

From: _____ To: _____ = _____ Days

Total Days of Jail Credit Earned = 5 Days

SENTENCE BEGINS DATE: _____ [Sentencing Date - Days of Jail Credit Earned = Sentence Begins Date]

6. Additional Comments:

7. Motion for New Trial Denied: ☐ Yes ☐ No

8. Motion for Judgment of Acquittal Denied? ☐ Yes ☐ No

SECTION VII. SIGNATURES

1. Judge's Signature:

Roger J. Dossard

2. Date:

20 Feb 09

3. Name of Prosecuting Attorney: RUTH A. RITTHALER #13092
Assistant County Attorney

4. Name of Defense Attorney: EDWARD BATTITORI

Date: **1-02-09** *Ruth A. Ritthaler*

Date:

Address: Judicial Center
300 E. Main
Independence, KS 67301

Address: 301 N. Broadway
Pittsburg, KS 66762

Phone No: (620) 330-1020

Phone No: (620) 230-0330

Exhibit 16

1 IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS

2
3 KARENA WILSON and TRISTAN KOEHN,)

4 Petitioners,)

5 vs.)

Case No.
2018-CV-000147

6 LARRY MARKLE, in his official)
capacity as County Attorney of)
7 Montgomery County,)

8 Respondent.)

9 PURSUANT TO K.S.A. CHAPTER 60

10
11 D E P O S I T I O N

12 Deposition of TRISTAN MICHAEL KOEHN, taken by
13 the Respondent, before Michelle D. Hancock, a Certified
14 Shorthand Reporter of Kansas, at 300 East Main Street,
15 Independence, Montgomery County, Kansas, on the 26th day
16 of June, 2019, at 10:56 AM.

17 A P P E A R A N C E S

18 Petitioner Tristan Koehn appeared in person and
19 by Mr. Zal K. Shroff of ACLU Foundation of Kansas, 125
20 North Market, Suite 1725, Wichita, Kansas 67202, and Ms.
21 Lauren Bonds and Ms. Taylor Soule, ACLU Foundation of
22 Kansas, 6701 West 64th Street, Suite 210, Overland Park,
23 Kansas 66202.

24 Respondent appeared by and through Ms. Tracy M.
25 Hayes of Sanders Warren Russell & Scheer LLP, 9401

1 A. Yes, ma'am.

2 Q. Just -- that's a bad question, and I just want to
3 make sure the record is clear. You haven't picked
4 up the phone and asked Mr. Battitori regarding
5 whether or not you would qualify for diversion in
6 Montgomery County, is that correct?

7 A. Yes, ma'am.

8 Q. Okay. Have you asked Mr. Battitori to ask for
9 continuances or delay your criminal case in any
10 manner because of this lawsuit with the ACLU?

11 A. No, ma'am.

12 Q. So you and Mr. Battitori have not had any
13 conversations regarding diversion, correct?

14 A. Yes, ma'am.

15 Q. That's correct, right?

16 A. Right.

17 Q. Okay. Perfect. Do you have any information or
18 reason to believe Mr. Battitori doesn't know about
19 the diversion program in Montgomery County?

20 A. He might not.

21 Q. And what is your basis of that belief?

22 A. He probably should know.

23 Q. Mr. Battitori is an attorney that practices here
24 frequently, correct?

25 A. Yeah.

1 A. No.

2 Q. Do you have any information on whether or not a
3 diversion conference is required?

4 A. No.

5 Q. As we sit here today, have you been offered
6 diversion for the December 27, 2018 charges?

7 A. No.

8 Q. And you've never discussed, and your criminal
9 attorney, Mr. Battitori, has never mentioned
10 diversion to you, correct?

11 A. Yes, correct.

12 Q. Are you aware that your criminal defense attorney,
13 Mr. Battitori, has contacted the county attorney's
14 office regarding a possible plea deal?

15 A. No.

16 Q. You've not discussed any type of plea deal with Mr.
17 Battitori?

18 A. (Shook head back and forth.)

19 Q. Is that a no?

20 A. No. Yeah.

21 Q. Sorry. She --

22 A. That's okay.

23 Q. How do you believe you have been affected by not
24 being told about the diversion program in Montgomery
25 County?

1 A. Yes.

2 Q. What is your understanding of expungement?

3 A. It's like after so many years -- it's kind of like a
4 diversion, but it's just a lot longer, from what
5 I --

6 Q. Do you have an understanding whether or not you
7 still have to go through the expungement process if
8 you do diversion?

9 A. I have no idea.

10 Q. Do you have an understanding on whether or not
11 charges can be expunged as part of a plea deal or
12 even if you're convicted?

13 A. I have no idea.

14 Q. Are you aware there's a fee associated with applying
15 for diversion?

16 A. Yes.

17 Q. What is your understanding of that fee?

18 A. I don't know.

19 Q. Just know there is one, correct?

20 A. There's always a fee.

21 Q. Would you be able to afford to pay a \$300
22 nonrefundable application fee for diversion?

23 A. No.

24 Q. You understand nonrefundable means if you -- after
25 you pay the \$300 after applying, even if you are

1 denied diversion, you don't get that money back,
2 correct?

3 A. Well, I do now.

4 Q. Are you currently employed?

5 A. Yes.

6 Q. And where are you employed at?

7 A. Stoney's Grub and Pub.

8 Q. Okay. And what is your job duties or title there?

9 A. Cook.

10 Q. How long have you been employed there?

11 A. A year.

12 Q. Were you employed there at the time of your arrest
13 in December of 2018?

14 A. Yes.

15 Q. What is your salary there?

16 A. 8.25 an hour.

17 Q. And approximately how many hours do you work per
18 week?

19 A. It varies. It really does.

20 Q. It just depends on how they schedule you?

21 A. Yeah.

22 Q. Has there been any change to your work hours since
23 your arrest in December of 2017?

24 A. Yes.

25 Q. Is it just normal fluctuations or were they changed

Exhibit 17

Withheld from Public View
by Order of the Montgomery
County District Court
– July 11, 2019

Exhibit 18

IN THE SUPREME COURT OF THE STATE OF KANSAS

KANSAS CROSSROADS FOUNDATION
and KARENA WILSON;

Petitioners,

vs.

LARRY MARKLE, in his official capacity
as County Attorney of Montgomery County;

Respondent.

Original Action No. _____

PETITION FOR WRIT OF MANDAMUS

Petitioners Kansas Crossroads Foundation (“KCF”) and Karena Wilson hereby respectfully seek a Writ of Mandamus requiring Respondent Larry Markle, County Attorney for Montgomery County, Kansas to (1) create written diversion policies and guidelines that fully and accurately describe the county’s entire diversion program, particularly all eligible charges and eligibility requirements, (2) provide written notice of that diversion program, and the policies and guidelines related to the program, to all defendants charged in his jurisdiction, prior to conviction or other disposition, and (3) provide a diversion conference to those defendants who are offered diversion, with the defendant present and an opportunity for the defendant to be represented by counsel. Respondent has a clearly defined legal duty to inform each defendant, in writing, about his diversion policies and guidelines under K.S.A. §22-2907(3), which means that the policies and guidelines must fully and accurately describe the program in the first place. Moreover, Respondent has an obligation to provide in-person diversion conferences to defendants offered diversion under K.S.A. § 22-2907(2).

Petitioners seek this order because Respondent Markle has failed to abide by the above-referenced procedural requirements in K.S.A. §22-2907. Respondent's persistent failure to comply with K.S.A. §22-2907 has constituted and will continue to constitute the unlawful performance of public duties and the unlawful exercise of public office. Further, Respondent's failures are representative of a trend of noncompliance that spans Judicial Districts and impacts untold numbers of defendants in dozens of counties across Kansas. *See Exhibit A.*

Accordingly, Petitioners respectfully request that the Court review this case and grant a writ of mandamus at its earliest convenience.

In support of their petition, Petitioners allege and state as follows:

I. JURISDICTION

1. This Court has original jurisdiction over Petitioners' mandamus action under K.S.A. 60-801 *et seq.*, Article III, § 3 of the Kansas Constitution, and Rule 9.01(a) of the Rules of the Supreme Court.
2. In accordance with Rule 9.01(a) of the Rules of the Supreme Court of Kansas, Petitioners are filing a Memorandum of Points and Authorities, together with documentary evidence supporting the facts alleged.
3. An original action in this Court for mandamus is necessary because adequate relief is not available to Petitioners in the district courts. *See Sup. Ct. R. 901 (b).* Further, access to diversion is a matter of great public importance and resolution in this Court will provide speedy adjudication of these important questions and provide much needed guidance to prosecutors across the state. Given the importance of fairness in diversion access and the widespread

noncompliance with the statute provisions, adequate relief is not available in the district court.

II. PARTIES

4. Petitioner Kansas Crossroads Foundation (“KCF”) is a 501(c)(3) nonprofit organization. KCF is incorporated in Kansas and is headquartered in Neodesha, Wilson County, Kansas.
5. Petitioner KCF provides ministry and support services to the rural poor of Southeast Kansas, specifically to individuals recovering from drug and alcohol addiction. A number of defendants who were prosecuted and confined in Montgomery County on drug or alcohol related offenses participate in KCF's addiction recovery program. As a result, KCF spends significant staff and volunteer time, as well as financial resources, helping defendants convicted in Montgomery County comply with the terms of their parole and reconstruct their lives after long periods of incarceration.
6. KCF often must divert time and resources away from other rehabilitation services to help low-level offenders manage their lives post-release. Petitioner KCF provides room and board to individuals who no longer have stable housing because of their time in jail. Moreover, KCF spends significant time and money transporting clients to and from Fredonia and Independence to attend meetings with parole officers and undergo court mandated drug testing. Finally, KCF must dedicate substantial resources to help defendants who have lost proof of identity and citizenship documents during their incarceration to rebuild their identity. KCF has had to divert significant time and resources

away from providing critical drug rehabilitation services in order to offer prison re-entry assistance to diversion eligible defendants who were not able to take advantage of diversion because of Respondent's failures.

7. Petitioner Karena Wilson is a resident of Montgomery County, Kansas who was prosecuted by the Respondent and is serving a probation sentence.
8. Ms. Wilson is a 19 year old resident of Independence, Kansas who was prosecuted in Montgomery County on charges of theft of property under \$1,500. In or around mid-June 2017, Ms. Wilson was arrested for breaking into a soda machine outside of a liquor store in Independence, Kansas. Ms. Wilson pled guilty to three counts of misdemeanor theft and received one year probation. As a result, Ms. Wilson is required to pay a fine of more than \$2,000 which she has struggled to afford despite having a job. Ms. Wilson was never informed in writing about Montgomery County's diversion policy. She was also not told about program verbally. Ms. Wilson has no prior convictions, and under Markle's policy and past practice, likely would have been eligible to apply for diversion in Montgomery County. Thus both Petitioners have standing under Kansas law to assert their interest.
9. Respondent Larry Markle is the County Attorney for Montgomery County. He may be served at 300 East Main Street Independence, Kansas 67301.

III. STATEMENT OF FACTS

10. Mr. Markle was appointed to serve as the Montgomery County Attorney in 2006.

11. Mr. Markle currently maintains some documents concerning the Montgomery County diversion program and has maintained a policy throughout his tenure as Montgomery County Attorney. *See Exhibit B; Exhibit C.*
12. Mr. Markle does not provide written notice of the Montgomery County diversion program to defendants charged with diversion-eligible offenses. Further, he only provides verbal notice of the Montgomery County diversion program to eligible defendants if they appear in court.
13. Mr. Markle also consistently fails to provide statutorily required diversion conferences in misdemeanor cases to defendants who are offered diversion.
14. Mr. Markle's current policies would provide defendants little insight into whether they would be eligible for diversion even if Markle did provide them.
15. When Ms. Wilson was charged with Class A Misdemeanor Theft as an 18-year-old, first-time offender, she was not provided with written notice of Montgomery County's diversion program. Moreover, Mr. Markle did not inform Wilson about Montgomery County's diversion program during any of her court appearances even though she was charged with a crime Respondent would consider diversion under terms of his current policies. *See Exhibit B.*
16. KCF has also been injured by Mr. Markle's failure to provide its clients with access to diversion. Due in part to Mr. Markle's refusal to comply with the diversion statute, KCF has been forced to counsel more clients in Montgomery County jail and devote resources towards helping them meet probation and parole obligations.

17. In an effort to resolve the matter without resorting to litigation, the undersigned counsel, on behalf of Petitioners, contacted Mr. Markle on May 30, 2018. *See Exhibit D.* Mr. Markle replied to Petitioners, declining to take action to resolve the matter and directing Petitioners to “take whatever legal action you feel appropriate.” *See Exhibit E.*

IV. GROUNDS FOR RELIEF

18. Here, Respondent has a clear statutory duty to create written policies and guidelines regarding his diversion program, and further to provide eligible defendants with written notice of those policies and guidelines under K.S.A. §22-2907(3). Further, Respondent has a clear statutory duty to provide defendants who have been offered diversion with an in-person diversion conference. That duty is also set forth in K.S.A. §22-2907(2), which provides “such policies and guidelines shall provide for a diversion conference and other procedures in those cases where the district attorney elects to offer diversion in lieu of further criminal proceedings on the complaint.”

V. RELIEF SOUGHT

19. For the forgoing reasons, and those stated in the supporting exhibits, Petitioners seek the following relief:
- a. An order compelling Respondent to create diversion policies and guidelines that fully and accurately describe the entire diversion program, including what charges are eligible and what factors are disqualifying.

- b. An order compelling Respondent to provide written notice of diversion to all defendants in accordance with Respondent's clearly defined legal duty under K.S.A. §22-2907(3).
- c. An order compelling Respondent to provide diversion conferences to all eligible defendants in accordance with Respondent's clearly defined legal duty under K.S.A. §22-2907 (2) and (3).
- d. Such other relief as this Court deems just and proper.

Dated: June 8, 2018

Respectfully submitted,

/s/ Lauren Bonds
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/s/ Somil Trivedi
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**pro hac vice application pending*

*Counsel for Petitioners Kansas Crossroads
Foundation and Karena Wilson*

CERTIFICATE OF SERVICE

The undersigned person hereby certifies that a true and correct copy of the above and foregoing document was placed with a courier service on June 8, 2018 for delivery to:

Larry Markle
Montgomery County Attorney
300 East Main Street
Independence, KS 67301

/s/ Lauren Bonds
Lauren Bonds

IN THE SUPREME COURT OF THE STATE OF KANSAS

KANSAS CROSSROADS FOUNDATION
and KARENA WILSON;

Petitioners,

vs.

LARRY MARKLE, in his official capacity as
County Attorney of Montgomery County;

Respondent.

Original Action No. _____

MEMORANDUM OF POINTS AND AUTHORITIES

Come now Petitioners and submit the following Memorandum in support of their Petition for Writ of Mandamus filed herewith:

INTRODUCTION

Petitioner Karena Wilson is a 19 year old from Independence, Kansas in Montgomery County. In June of last year, Ms. Wilson was driving around Independence when a person she was driving got out of the car and broke into a soda machine, stealing the coin collection boxes inside. Despite later assisting the police to help apprehend the man, Ms. Wilson was herself charged with theft. Between June and December, no one at the Montgomery County Attorney's Office, including Respondent County Attorney Larry Markle, provided her with written notice of the MCAO's diversion policies and guidelines, much less offered her the option to apply.

Instead, she took a plea deal. At the time of the arrest, she had no criminal record. Now she has a criminal record and one year of probation.¹

Petitioner Kansas Crossroads Foundation (“KCF”) provides spiritual, drug counseling, and job placement services to individuals impacted by poverty and the criminal justice system in Southeastern Kansas, including Montgomery County. Jack Kyle founded KCF. Mr. Kyle and his employees spend significant time and money providing housing, food, and other post-release assistance to recently incarcerated individuals; connecting clients with a positive, drug-free community; and helping formerly addicted people find stable employment. Mr. Kyle would like to expand the employment component of KCF’s work to better support the Kansas economy, but has been unable to do so because of so much need for direct services for clients who are in jail or on probation instead of benefitting from diversion.

Under K.S.A. § 22-2907 *et seq.* (hereinafter, the “Kansas Diversion Statute”), district and county attorneys are *required to maintain written policies and guidelines describing their diversion programs*, and *must provide written notice of those policies and guidelines to all criminal defendants*. K.S.A § 22-2907(2) and § 22-2907(3). These policies *must provide for, and, where the defendant is offered diversion, the prosecutor’s office must also provide, a diversion conference at which defendants must be present and have a meaningful opportunity to be represented by counsel*. *Id.* The purpose of these requirements is to give criminal defendants a meaningful opportunity to avail themselves of diversion, which the people of Kansas, via their Legislature, have determined to be an important component of a healthy, cost-effective criminal justice system. *See State v. Greenlee*, 620 P.2d 1132, 1138 (Kan. 1980)

¹ Ms. Wilson now has a pending theft charge in Neosho County that did not exist at the time she was arraigned or made initial appearances in her Montgomery County case.

(“[T]he objective sought by the legislature would appear to be to encourage a uniform procedure to provide an alternative to formal conviction.”); Kansas House Judiciary Committee Report on H.B. 3130 at 48 (“The Committee has examined the pretrial diversion approach and believes that such a program should be available in Kansas to reduce the number of persons committed to institutions.”); *see also* XXXI Kan. Op. Att’y Gen. 32 (1997) (plain language of the Diversion Statute “indicate(s) the Legislature’s intent to provide for diversion programs throughout the State and to create uniform requirements for prosecutors to follow in carrying out those programs” and that “the purpose of the notification requirement is to safeguard a defendant from discrimination by a prosecutor”); XXXI Kan. Op. Att’y Gen. 15 (1997) (noting that the *Greenlee* court “cautioned the district attorney to take immediate action to bring his program into compliance with the [diversion] statutes[.]” and determining that the diversion program in question “must comply with the statutory diversion requirements set forth in K.S.A. 22-2906 *et seq.*”).

Mr. Markle is in open violation of the Kansas Diversion Statute. First, based on his response to a Kansas Open Records Act request, Mr. Markle only has standalone, written diversion policies related to traffic infractions and DUIs, even though he offers diversion for more charges than those. *See* Exhibit B. There is a document called “County Attorney’s Policies for Diversion” which lists some eligibility requirements for certain other charges, but the document does not contain all eligible charges or what criminal history (e.g., what type or amount of prior arrests, convictions, or diversions) is disqualifying. For example, there is no mention of felonies in Mr. Markle’s policies, even though the office has offered a (very low) number of felony diversions in the past. *Id.* It is at best unclear whether Ms. Wilson’s charges and circumstances are eligible or not. Further, as noted, these documents were only produced in

response to a Kansas Open Records Act request for a cost of \$20.75; they are not provided in writing or otherwise to criminal defendants. Petitioners' counsel's investigation also indicates that Mr. Markle does not provide the statutorily required diversion conference for misdemeanor diversions, in the rare instances in which he offers them at all. In all these ways, Mr. Markle is violating the Kansas Diversion Statute.

These violations extend beyond the named Respondent to other district and county attorneys. *See, e.g.*, Exhibit A (collecting responses to KORA requests from other county and district attorneys). Their failure to comply with Kansas law has negatively impacted Petitioners and is likely to impact defendants and service providers across the state. Defendants who could have charges dismissed instead lose their liberty via jail time and/or probation restrictions. Moreover, first-time offenders now have a criminal record, and with it tens of thousands of negative state and federal "collateral consequences" like restrictions on employment, housing, voting, and professional licenses that make it difficult to re-enter society and contribute to the Kansas economy.² And, because diversion often comes with mental health, substance abuse, and other treatment that may not be available in jail or on probation, successful programs in other states show that diversion recipients are less likely to commit crimes again.³

² *See* National Inventory of Collateral Consequences of Conviction, *available at* <https://niccc.csgjusticecenter.org/search/?jurisdiction=20> (last accessed June 7, 2018); Catherine E. Forrest, *Collateral Consequences of a Criminal Conviction: Impact on Corrections and Reentry*, *Corrections Today* (January/February 2016), *available at* <https://www.ncjrs.gov/pdffiles1/nij/249734.pdf> (last accessed June 7, 2018).

³ For example, in neighboring Oklahoma, a Smart on Crime initiative placed non-violent offenders with mental health or addictive disorders into a variety of diversion programs, which, after a three-year investment in cost overruns, are now saving the state \$123 million a year. *See* Richard D. Schneider, *Mental Health Courts and Diversion Programs: A Global Survey*, 33 *Int'l J. Law Psychiatry* 201, 202 (2010). According to an ACLU of Kansas report, if Respondent's county increased its use of felony diversion to meet the national average of 9% of all charges just next year, the prison population would decrease by roughly 22 people, and those counties' taxpayers could save over \$200,000. *See* ACLU of Kansas, *Choosing Incarceration* (2018),

Accordingly, Petitioners respectfully request that this Court issue a Writ of Mandamus requiring compliance with the above-referenced provisions of the Kansas Diversion Statute, as outlined in the Relief Sought in the attached Petition.

ARGUMENT

I. MANDAMUS IS APPROPRIATE IN THIS CASE

a. Legal standard

An original action in mandamus is an appropriate vehicle for compelling a public official such as Respondent Markle to perform a required action. K.S.A. § 60-801 (mandamus is “a proceeding to compel some inferior court, tribunal, board, or some corporation or person to perform a specified duty, which duty results from the office, trust, or official station of the party to whom the order is directed, or from operation of law.”); *see also Legislative Coordinating Council v. Stanley*, 957 P.2d 379, 382 (Kan. 1998). “The right to mandamus relief requires the fulfillment of three conditions: (1) that the petitioners have a clear right to relief; (2) that the respondent's duty is clearly defined; and (3) that the petitioners have no other adequate remedy.” *Merryfield v. Kansas Soc. & Rehab. Services*, 253 P.3d 386 (Kan. Ct. App. 2011).

b. Petitioner has suffered an injury and has a clear right to relief

Mandamus petitioners establish a clear right to relief by showing “an injury or interest specific and peculiar to himself, and not one that he shares with the community in general.” *Mobil Oil Corp. v. McHenry*, 436 P.2d 982, 1007 (Kan. 1968). In other words, petitioners must establish standing to sue. “Whether or not a private individual has brought himself within the

narrow limits of the well-established rule must be determined from the particular facts of each individual case.” *Id.*

Ms. Wilson and KCF have both shown particular and specific injuries. Ms. Wilson did not receive written notice of Montgomery County’s diversion policies and guidelines. She believes she was likely diversion eligible but, because of Mr. Markle’s failure, she was never able to explore that option.⁴ Instead, she now has a criminal conviction.

KCF has also alleged a particularized, unique injury. At least in part because of Mr. Markle’s failures to give defendants their due process under the Diversion Statute, KCF has been forced to counsel more clients in the Montgomery County jail, rather than expand its employment programs and, with it, economic development in Southeast Kansas.

This Court has also considered the public importance of the question at hand to inform the standing question. “*Turning to standing*, this court has allowed original actions in mandamus when the petitioner demonstrates a need ‘to secure a speedy adjudication of questions of law for the guidance of state officers and official boards in the discharge of their duties.’” *Ambrosier v. Brownback*, 375 P.3d 1007, 1010 (Kan. 2016) (quoting *Kansas Bar Ass’n v. Judges of the Third Judicial Dist.*, 14 P.3d 1154 (Kan. 2000) (emphasis added)).

Petitioners are seeking exactly that: speedy adjudication of a question of statutory construction to guide district and county attorneys in the discharge of their duties under the Kansas Diversion Statute. As this Court is well aware, the Kansas criminal justice system processes thousands of criminal defendants a day. Every day that this question is not resolved, more of these individuals across the state are being deprived of their rights to complete and

⁴ Even if Ms. Wilson was not ultimately diversion eligible under Mr. Markle’s requirements, Ms. Wilson would have been in a better position to negotiate for inclusion, or negotiate her plea deal, had she been made aware in writing of the diversion program, as required by statute.

accurate written notification of diversion programs and, where eligible, a diversion conference with counsel present. This Court's immediate attention is warranted.

c. The Kansas Diversion Statute creates a clearly defined legal duty, and Mr. Markle is illegally ignoring it

To be compelled to act via mandamus, the respondent official must have a clear legal duty to take the action at issue, and the required action must be strictly ministerial in nature, i.e., an action the official is clearly obligated to perform in a prescribed manner. *See Kan. Med. Mut. Ins. Co. v. Svaty*, 244 P.3d 642 (Kan. 2010); *Schmidtlien Elec., Inc. v. Greathouse*, 104 P.3d 378, 394 (Kan. 2005). While the content of a particular county's diversion policy and the ultimate decision to grant diversion are discretionary, prosecutors have a clearly prescribed duty to (1) create a program with written policies and guidelines that fully and accurately describe the program, including what charges are eligible and criminal history is disqualifying, (2) provide written notice of the program, including its policies and guidelines, to all defendants, and (2) provide an in-person diversion conference, with the opportunity for counsel to attend, to those offered diversion.

The Kansas Diversion Statute states that district attorneys "shall" perform these functions. K.S.A. § 22-2907(3) ("Each defendant shall be informed in writing of the diversion program and the policies and guidelines adopted by the district attorney."); *id.* at § 22-2907(2) and (3) ("Such policies and guidelines shall provide for a diversion conference and other procedures in those cases where the district attorney elects to offer diversion [and] [i]n all [such] cases, the defendant shall be present and shall have the right to be represented by counsel at the diversion conference with the district attorney."). This wording is strong if not dispositive evidence of a clear legal duty.

Even if the plain language is not dispositive, “[s]hall’ provisions affecting a party’s rights are more likely to be seen as mandatory[,]” while those that merely “fix[] a mode of proceeding and a time within which an official act is to be done and is intended to secure order, system and dispatch of the public business” are “discretionary.” *State v. Raschke*, 219 P.3d 481, 485, 487 (Kan. 2009). The *Raschke* opinion highlighted a statute and question analogous to ours: “We have also held that a statutory provision requiring officers to provide oral and written notice to individuals suspected of driving under the influence before administering a breath test is mandatory.” *Id.* at 486-87 (citing cases interpreting the notice provision of K.S.A. 1997 Supp. 8-1001).

Given the statute’s clear statutory language requiring complete and accurate written notice and a diversion conference with counsel present—as well as the fact that those provisions impact defendants’ rights—Mr. Markle cannot argue that the legal duty here is unclear. He is simply choosing to ignore it.

d. There is no other adequate remedy for Petitioners or others in their position, and even if there were, mandamus is appropriate in a case of public importance like this one

Mandamus is appropriate for petitioners who lack judicial redress through a plain and adequate remedy at law. *Schmidtlien Elec., Inc.*, 104 P.2d 378. This relief can only be obtained through writ of mandamus. Criminal defendants cannot compel a prosecutor to perform his statutorily mandated diversion duties in a criminal appeal, as the ultimate decision to grant diversion is discretionary. *See Greenlee*, 620 P.2d at 1138. Nor do these Petitioners have an express private right of action under K.S.A. § 22-2907 to bring affirmative civil litigation to compel performance.

And even if there were an adequate alternative remedy at law—which there is not—this Court still may (and should) take up this petition in order to provide clear guidance to Kansas district and county attorneys on a matter of vital public importance. *See Wilson v. Sebelius*, 72 P.3d 553, 556 (Kan. 2003) (“Numerous prior decisions have recognized mandamus is a proper remedy where the essential purpose of the proceeding is to obtain an authoritative interpretation of the law for the guidance of public officials in their administration of the public business, notwithstanding the fact that there also exists an adequate remedy at law.”).

II. THIS COURT MAY AND SHOULD EXERCISE ORIGINAL JURISDICTION

Though mandamus petitions may be filed in a district court, *see, e.g., Krallman v. Hecht*, 143 P.3d 421 (Kan. Ct. App. 2006), this Court may exercise original jurisdiction for proceedings in mandamus as well, *see Kan. Const. art. III, § 3*. “To support an original action in this court, a petitioner is required to state ‘the reason why the action is brought in the appellate court instead of in the district court.’” *Ambrosier*, 375 P.3d at 1009 (citing Kansas Supreme Court Rule 9.01(b)). “[J]udicial economy, the need for speedy adjudication of an issue, and avoidance of needless appeals” are all considerations that augur in favor of the Supreme Court exercising original jurisdiction. *Id.*; *see Legis. Coordinating Council v. Stanley*, 957 P.2d 379, 387 (Kan. 1998) (“This court will entertain a mandamus action if the issue is a matter of great public interest and concern.”).

As noted above, this Court has also consistently invoked its original jurisdiction for mandamus petitions that present an “important public question of statewide importance appropriate for this court’s attention in the first instance.” *Ambrosier*, 375 P.3d at 1010. Finally, mandamus is the “proper remedy,” and original jurisdiction in the Supreme Court is appropriate, where “the essential purpose of the proceeding is to obtain an authoritative interpretation of the

law for the guidance of public officials in their administration of the public business,” and where similar cases statewide are likely to present the same questions. *Manhattan Bldgs., Inc. v. Hurley*, 643 P.2d 87, 93 (Kan. 1982); *State ex rel. Stephan v. Finney*, 836 P.2d 1169, 1175 (Kan. 1992) (using same language); see *State ex rel. Smith v. State Highway Comm’n*, 295 P. 986, 990 (Kan. 1931) (“The use of mandamus to secure a speedy adjudication of questions of law for the guidance of state officers and official boards in the discharge of their duties is common in this state.”); see also *State ex rel. Schmidt v. Moriarty*, 2014 Kan. LEXIS 570 (2014) (inconsistent application of state marriage-license requirements by statewide officials merited original jurisdiction).

Every factor this Court has articulated in favor of exercising original jurisdiction exists here. First, this is an urgent matter that requires immediate redress and also happens to be a straightforward question of statutory interpretation. Filing in the lower courts only to appeal the legal question and inevitably end up in this court several months from now will be inefficient and delay the resolution of a question that could impact countless Kansans.

Second, it bears repeating this is an important public question affecting the lives and liberty of thousands of current and future criminal defendants in Kansas. Requiring written notice of diversion ensures that defendants are fully informed of their options under Kansas law, and that prosecutors do not arbitrarily withhold the opportunity to apply to the program or restrict the opportunity to apply only to defendants who are represented by counsel. Pro se defendants without previous contact with the criminal justice system likely will not know what diversion is, much less whether they are eligible to apply for it under their elected prosecutor’s guidelines. K.S.A. § 22-2907’s written notice requirement ensures all defendants have an equal opportunity to apply for diversion, regardless of whether they can afford counsel.

Diversion conferences are similarly a matter of sufficient public concern to warrant the original jurisdiction of the court. Diversion conferences provide defendants with an opportunity to learn more about the benefits and costs of entering diversion, and negotiate the terms of their diversion agreements. Participation in the conference is critical to the success of the defendant, and the opportunity to be represented ensures that defendants fully understand the proceedings.

Prosecutors across the state are either entirely failing to comply with these provisions, or, at best, are complying with them in wildly inconsistent ways. For the benefit of criminal defendants statewide, as well as the fair, efficient, consistent administration of criminal justice as a whole, this Court should exercise original jurisdiction and issue the requested writ.

III. CONCLUSION

For the reasons set forth above, Petitioners respectfully request that the Court issue a writ of mandamus directing Respondent to create written policies and guidelines that provide sufficient notice of the diversion program's requirements for all charges, actually provide written notification of those policies and guidelines to defendants, and provide a diversion conference to all defendants to whom diversion is offered pursuant to K.S.A. § 22-2907.

Respectfully submitted,

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strivedi@aclu.org
**pro hac vice application pending*

Counsel for Petitioners

CERTIFICATE OF SERVICE

The undersigned person hereby certifies that a true and correct copy of the above and foregoing document was placed with a courier service on June 8, 2018 for delivery to:

Larry Markle
Montgomery County Attorney
300 East Main Street
Independence, KS 67301

/s/ Lauren Bonds
Lauren Bonds

Exhibit A

OFFICE OF
ATCHISON COUNTY ATTORNEY
P.O. BOX 75
ATCHISON, KANSAS 66002

GERALD R. KUCKELMAN
COUNTY ATTORNEY



PHONE
913-804-6020
FAX
913-367-8221


December 18, 2017

Lauren Bonds
Legal Director
ACLU of Kansas
6701 W. 64th Street, Suite 210
Overland Park, KS 66202

Re: Request for Diversion Records

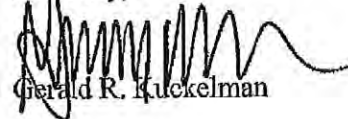
Dear Ms. Bonds:

I am in receipt of your recent open records request concerning diversion documents from Atchison County. Enclosed please find a copy of the Atchison County Attorney's diversion guidelines dated January 1, 2001 and a copy of the guidelines as modified on January 1, 2005. These are the only documents available concerning diversions.


You also requested a copy of any application for diversion however we do not have a form for that purpose. We permit defendants and counsel to request a diversion by simply writing a letter making the request and frequently we accept an oral request. 

I hope this is the information you need, however, if you should need anything else please feel free to contact me.

Sincerely,




Gerald R. Kuckelman



Lauren Bonds

From: Kevin Hill <khill@brcoatty.com>
Sent: Monday, December 18, 2017 1:34 PM
To: Lauren Bonds
Subject: Brown County, Kansas Diversion Policy
Attachments: Diversion Policy 2015- County.pdf; Br. Co. Diversion Policy.pdf

Ms. Bonds, I am in receipt of your letter dated December 13, 2017 and received December 18, 2017 regarding Brown County's diversion policy. I am not aware of the extent of the ACLU's investigation that formed the basis for their recent report "Choosing Incarceration," but the same would be incorrect if it states that Brown County does not have a written diversion policy. We have had a written diversion policy since approximately 1993 when I first took office. A copy of said policy that was in effect on January 1, 2009 as well as the diversion policy that was revised in 2015 to include first time marijuana cases is attached. Said documents are submitted to comply with your requests numbered (1) and (3) in your letter.

The procedure for notifying defendants of the potential for diversion involves the judge informing eligible defendants of the same at their first appearance with instructions to contact my Administrative Assistant if they would like to request diversion or desire more information on the same. A written copy of the policy is provided upon request. There are no documents concerning this procedure so I cannot produce the same for production under KORA. 

If you should have any questions concerning this matter upon review of the attached, please feel free to contact me.

Kevin M. Hill
BROWN COUNTY ATTORNEY
601 Oregon, Suite 101
Hiawatha, Kansas 66434
(785) 740-7401 (phone)
(785) 740-7403 (fax)
khill@rainbowtel.net

CONFIDENTIALITY STATEMENT:

This message and its contents are privileged and confidential and are solely for the use of the intended recipient. Should you not be the intended recipient, be aware that any review, disclosure, copying, distribution, or use of the contents of this message is strictly prohibited. If you have received this in error, please destroy it immediately and please notify the sender immediately (785) 740-7401.

PO Box 466

Gray County Attorney

Curtis E. Campbell
Cimarron, KS 67835-0466

Phone (620) 855-3645


December 19, 2017

ACLU Foundation of Kansas
Legal Department
6701 West 64th Street, Suite 210
Overland Park, Kansas 66202

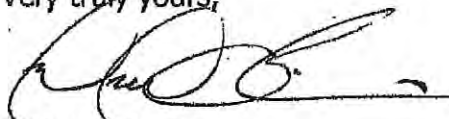
Re: Public Records Request Regarding Pretrial Diversion Practices and Policies under
K.S.A. 22-2907

Greetings:

This letter is written in response to your requests of December 13, 2018. In responding to each of your enumerated paragraphs, respectively:

1. Enclosed you will find a copy of the policies and guidelines utilized by the Gray County Attorney regarding pretrial diversion.
2. The office of the Gray County Attorney does not have documents concerning the process or procedures for notifying defendants about pretrial diversion. Rather, Defendants are notified in person at the first appearance/arraignment hearing of opportunity to apply for diversion. 
3. Enclosed you will find a copy of the guidelines for pretrial diversion including application process. Also included are the statutory guidelines for Defendants seeking pretrial diversion.

Very truly yours,



Michael Giardine

GRAY COUNTY ATTORNEY'S OFFICE

MG/lc

Enclosure

HAMILTON COUNTY ATTORNEY

Robert H. Gale, Jr.
P.O. Box 906
211 N. Main
Syracuse, Kansas 67878
Phone: 620-384-5110 Fax: 620-384-5231
galelaw@pld.com

December 14, 2017

Ms. Lauren Bonds
A.C.L.U. Foundations of Kansas
6701 W. 64th, Suite 210
Overland Park, KS 66202

VIA MAIL
AND EMAIL: 1bonds@ACLUKansas.org


RE: KORA request for Pretrial Diversion Policy

Dear Lauren,

Pursuant to your email dated 12/13/17, please find enclosed the Pretrial Diversion Policy for Hamilton County, Kansas.

This policy was revised and adopted July 1, 2004, revising the policy I adopted January 10, 2001, when I first took office.

Also, enclosed please find a copy of the diversion application used in Hamilton County, Kansas.

In Hamilton County we encourage the use of the diversion, when appropriate, and defendants are commonly provided direction by the Clerk of the Court, the Magistrate Judge and by the County Attorney to make application for diversion. 

I believe this letter and the enclosed policy and application provides you with the records you requested. Should there be any additional information that you find helpful please contact me.

Kindest Regards,



Robert H. Gale, Jr.

RHG:js
Enclosures

Office of the
RUSSELL COUNTY ATTORNEY

County Attorney
Daniel W. Krug

P.O. Box 3
Russell County Courthouse
Russell, Kansas 67665-0003


Phone: (785) 483-3119
Fax: (785) 483-5376

December 18, 2017

ACLU Foundation of Kansas
Legal Department
6701 W. 64th Street, Suite 210
Overland Park, KS 66202


Dear Ms. Bonds:

Please find enclosed our response to your letter of December 13, 2017.

1. Diversion Policy is attached.
2. No documents are in existence with respect to the process or procedure for notification of defendants.
3. There are no document concerning the application process. Defendants or their attorney should simply make contact with the Russell County Attorney's Office. 

If you need further information please let us know.

Sincerely,


Daniel W. Krug

DWK/js
Enclosure

STANTON COUNTY ATTORNEY

David C. Black
(920) 492-8888
Fax (920) 492-1373
dblack@pld.com

P.O. Box 430
101 S. Main Street
Johnson, Kansas 67855


December 15, 2017

SENT VIA E-MAIL TO: lbonds@aclukansas.org

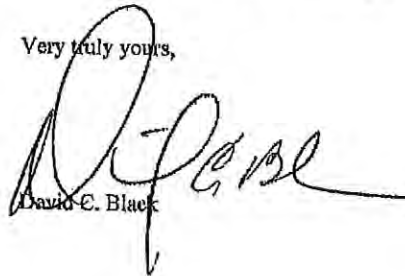
Lauren Bonds
ACLU

Re: Stanton County Diversion Policy

Dear Ms. Bonds,

Attached please find a copy of the current Stanton County diversion policy and application. The Judge, the Clerk or I generally inform the Defendants that they may apply for a diversion. 

Very truly yours,



David C. Black

Enclosures
DCB:crs

ELIZABETH BASKERVILLE HILTGEN

WASHINGTON COUNTY ATTORNEY

209 C Street, Washington, Kansas 66968

Phone: (785) 325-2149

Fax: (785) 325-2831

December 19, 2017

Lauren Bonds, Legal Director

ACLU Foundation of Kansas

6701 W. 64th St., Suite 210

Overland Park, Kansas 66202

lbonds@aclukansas.org


VIA FIRST CLASS MAIL AND E-MAIL

Re: Public Records Request Regarding Pretrial Diversion Practices and
Policies under K.S.A. 22-2907

Dear Ms. Bounds:

This letter serves as response to your request pursuant to the Kansas Open Records Act for the Diversion Practices and Policies for Washington County, Kansas; said request dated December 13, 2017, and received in this office on December 15, 2017.

Enclosed find the Washington County Diversion Policy Guidelines for Juvenile, Adult Offenders, and Speeding. Said policies were initially adopted June 1, 1998, and are updated periodically to reflect changes in court costs, fees and fines. Additionally enclosed is the Application for Diversion Program.

Defendants are notified of diversion program eligibility and requirements upon request by the defendant or defense counsel, or if after an initial review of a case file it appears an individual may be diversion eligible. While the factors set forth in K.S.A. 22-2908 are taken into consideration, each case is given an independent examination and review to determine eligibility. 

Thank you for your time and consideration of this matter. Should you have any questions, or need additional information, let me know.

Respectfully,


Elizabeth Baskerville Hiltgen

Exhibit B



LARRY MARKLE
County Attorney

TELEPHONE (620) 330-1020
FAX (620) 331-7230

OFFICE OF THE COUNTY ATTORNEY
MONTGOMERY COUNTY, KANSAS
FOURTEENTH JUDICIAL DISTRICT
MONTGOMERY COUNTY JUDICIAL CENTER
300 EAST MAIN STREET - INDEPENDENCE, KANSAS 67301
April 23, 2018

Larry Markle
Co. Attorney

Lauren Bonds, ACLU
6701 W. 64th Street
Suite 210
Overland Park, KS 66202

Re: Diversion Policy

Dear Lauren Bonds,

Please find the following documents enclosed; as per your KORA request.

- 1) Copy of the Montgomery County Diversion Policy
- 2) Copy of our county diversion application
- 3) Copy of our DUI diversion information sheet
- 4) Sample of our traffic diversion
- 5) Sample of our criminal/DUI diversion

Please advise if my office may be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Markle", is written over a large, stylized, handwritten "S" or "M" that spans across the signature line and extends downwards.

Larry Markle
Montgomery County Attorney

LM:ls

Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,

Plaintiff,

vs.

Case No. 2018-CR-000000-I

**(Suspect's Name),
(Address)
Independence, KS 67301
DOB: XX/XX/XXXX**

Defendant.

DIVERSION AGREEMENT

This DUI Diversion Agreement is entered into on this _____ day of April, 2018 by the above-captioned parties with the approval of their attorneys, if any, and shall continue in force and effect for a term of 12 months.

1. ELIGIBILITY FOR DIVERSION:

- a. _____ I affirmatively state that I have no other charges pending in this or another court that have not been previously disclosed to the District Attorney's Office on my Diversion Application.
- b. _____ I affirmatively state that I have no prior diversion in my LIFETIME for either driving under the influence (DUI/DWI/OUI), boating under the influence or refusal to submit to a blood, urine, or breath alcohol test in connection with a DUI/DWI/OUI investigation.

- c. _____ I affirmatively state that I have no prior conviction in my LIFETIME for driving under the influence (DUI/DWI/OUI), boating under the influence, or refusal to submit to a blood, urine, or alcohol test.
- d. _____ I understand and acknowledge that any pending charges that have not been disclosed to the District Attorney's Office shall be grounds for revocation of this DUI Diversion Agreement.
- e. _____ I further understand that discovery of any prior diversion in my LIFETIME or any prior conviction in my LIFETIME for driving under the influence (DUI/DWI/OUI), boating under the influence, or refusal to submit to a blood, urine, or breath alcohol test shall be grounds for revocation of this DUI Diversion Agreement.

2. I, the Defendant, fully understand and agree to the following:

- a. _____ My full name is _____.
- b. _____ My full name at the time the Information or Complaint in this case was filed was:
_____.
- c. _____ I have been charged with the following crime(s), which were filed via Information or Complaint in the District Court of Montgomery County, Kansas, on 8/2/2017:

Count 1

Example: DUI

Count 2

(If applicable)

- d. _____ I understand that I have the right to demand a prompt, full and complete evidentiary hearing and trial in this matter.
- e. _____ I understand and acknowledge that I have the right to retain an attorney to represent me concerning this agreement. I further understand that if I cannot afford an attorney, I may apply to the court for appointment of an attorney, and if the court determines that I am unable to afford to hire an attorney, an attorney would be appointed to represent me concerning this agreement. I have been given ample time to consult with an attorney concerning this agreement or, if choosing to represent myself, I have been given ample time review this agreement and am freely and voluntarily waiving the right to have an attorney represent me concerning this agreement.

- f. _____ The prosecution of this matter is being deferred pursuant to K.S.A. 22-2906 et. seq. and the policies and guidelines of the District Attorney, which have been provided to me in writing and which I have been given ample time to read.
- g. _____ I understand and acknowledge that a diversion for a violation of driving under the influence (DUI) or refusal to submit to a blood, urine, or breath alcohol test may be used to enhance the severity level of either or both of these crimes if I am charged with them in the future.
- h. _____ I understand that if I am not a citizen of the United States a diversion or conviction for a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.
- i. _____ I understand that I may be eligible for expungement of this diversion pursuant to K.S.A. 21-6614, and amendments thereto.

3. I, the Defendant, agree to do each of the following things:

- a. _____ I waive all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment.
- b. _____ I waive all rights under the law or the constitution of Kansas or of the United States to preliminary examinations and hearings.
- c. _____ I waive all rights under the law or the constitution of Kansas or of the United States to a speedy trial.
- d. _____ I waive all rights under the law or the constitution of Kansas or of the United States to a trial by jury.
- e. _____ I understand and acknowledge that I have the right to retain an attorney, and that if I cannot afford an attorney, I may apply to the court for appointment of an attorney, and if the court determines that I am unable to afford to hire an attorney, an attorney would be appointed to represent me. Understanding this, if choosing to represent myself, I freely and voluntarily waive all rights under the law or the constitution of Kansas or of the United States to counsel.
- f. _____ I agree not to violate the laws of the United States, of any State, or of any political subdivision of any State during the term of this diversion agreement. Traffic infractions shall not be considered violations of the law, however, a traffic violation of a traffic statute classified as a misdemeanor may be considered a violation of the law for purposes of this agreement.
- g. _____ I agree to notify my attorney and the District Attorney in writing within seven (7) days of any change in address, telephone number or place of employment and not

to move from the State without the prior approval of the District Attorney's Office. Any mail addressed to me at my last known address returned to the District Attorney's Office or to the District Court as not deliverable, no forwarding address on file, etc., will be considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.

- h. _____ I stipulate that I am the individual named in the Information, and that the offense(s) charged occurred in Montgomery County, Kansas. I agree that the facts as set forth in Addendum A, *Stipulation of Facts*, are true and accurate. I further stipulate to the facts as contained in the official report by:

Montgomery County Sheriff, Report Number: 17-1065 ,
written witness statements, and any lab or other test results prepared or taken in connection with this case as being true and accurate. I am agreeing to and waiving my right to require the State to call witnesses to testify and that I am waiving my rights under the law or the constitution of Kansas or of the United States to confront those witnesses or to call witnesses to testify on my behalf.

- i. _____ I agree and understand that violation of the terms and conditions of this agreement will result in revocation of diversion and this matter proceeding to trial based solely upon the Information, Addendum A, *Stipulation of Facts*, official reports identified above, written witness statements, lab or other test results, and any other evidence associated with this case. I stipulate that the previously described items shall be admitted into evidence without objection by me and without further foundation. I further stipulate that any trial on this matter and any proceedings on appeal shall be conducted solely on the stipulations contained herein, and that I will not be entitled to present additional evidence at the trial of the matter or any proceedings on appeal.

- j. _____ I agree to pay as follows:

Payment of Diversion cost - All Payments must be submitted to the Clerk of the Montgomery County District Court; the Court accepts cash, money orders or cashier's checks.

I shall pay the diversion cost in the amount of \$300.00, court costs in the amount of \$1XX.00, fingerprint fee of \$45.00, appointed attorney fees** of \$XXX.00, and total fines** of \$XXX.00, totaling \$XXX.00, at the time of signing the diversion agreement. The diversion agreement will not be processed until all monies due are paid into the District Court.

Any cash bond posted by me shall be applied to the balance due. The cash bond cannot be used to pay the diversion cost. Any remaining cash bond, after being applied to amounts due, will be returned to me.

*** FINES BY CHARGE:**

DUI
XXXX

\$750.00
\$ XX.00

****Attorney Fees shall be subject to approval by the Court but shall not exceed the amount stated above *unless subsequent legal action relating to the diversion is initiated.* No voucher will be approved if it is received more than 30 days after the execution of the diversion agreement. Subject to approval by the Court, it is my responsibility to pay any additional attorney fees or other Court related fees not specified in this diversion agreement**

k. _____ I acknowledge and understand that if this diversion is revoked, the criminal proceedings on the original charge(s) will be resumed and the clauses waiving all rights to a speedy trial, all rights to preliminary examinations and hearings, and all rights to a trial by jury, will remain in effect. I acknowledge and understand that Addendum A Stipulation of Facts and all stipulations set forth in paragraphs 2(i) and 2(j) will remain in effect. I acknowledge and understand that if the Court finds me guilty, the Court may impose any and all fines and/or incarceration as allowed by law for the original charge(s).

l. _____ I agree that the County Attorney's Office shall have thirty (30) days following expiration of this diversion to discover violations of this diversion and to proceed thereon.

m. _____ **Special Conditions:**

I agree to abstain from the use of alcohol and recreational drugs during the diversion period. I agree to submit to a test of breath, blood or urine at my cost at any time during the period of this DUI Diversion Agreement, if requested to do so by any treatment provider, Judge, or any Law Enforcement Officer. I further agree and stipulate that the results of said breath, blood or urine tests shall be admissible against me in any revocation hearing without further foundation. Notwithstanding the provisions of K.S.A. 8-1012, and amendments thereto, I agree and stipulate that any breath-alcohol tests completed with a preliminary breath-screening test device (PBT) approved by the Kansas Department of Health and Environment shall be admissible against me in any revocation hearing without further foundation.

3. The State agrees to do each of the following things:

- a. To suspend prosecution of the captioned case so long as the Defendant continues to fulfill the terms and conditions of the diversion agreement.
- b. To dismiss with prejudice and with costs assessed to the Defendant all charges in the captioned case at the end of the diversionary term upon a satisfactory showing that the Defendant has successfully fulfilled the terms of the diversion agreement.

The parties understand that it is the Defendant's responsibility to provide the District Attorney's Office with the required documentation.

The parties understand that if a motion to revoke diversion and reinstate prosecution is filed, the motion to revoke diversion and reinstate prosecution and a notice of hearing will be mailed directly to the last address provided by the Defendant. It is the Defendant's responsibility to contact his or her attorney in reference to the motion to revoke diversion and reinstate prosecution.

The parties understand and agree that should any section, subsection, sentence, clause, phrase, provision, or exemption of this DUI Diversion Agreement be declared invalid for any reason, such invalidity shall not affect the remaining portions or provisions contained within the diversion agreement.

By signing this agreement, I, the Defendant, agree, affirm and stipulate that I have read the entire diversion agreement, understand all of its terms and their meaning, including the rights I am waiving and the obligations I am assuming, and that my decision to enter this agreement is my own free and voluntary act.

Dated this _____ day of April, 2018

I have read this diversion agreement, fully understand its contents, and agree to its provisions.

Current Address:

(Name), Defendant

Approved by:

Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmaklelawyer@gmail.com

Approved by:

(Attorney Name)
Attorney for Defendant
Independence, KS 67301
Phone: (620) 331-0000
FAX: (620) 331-0000
Email: (Attorney E-mail)

IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS
SITTING AT COFFEYVILLE, KANSAS

STATE OF KANSAS

Plaintiff

Vs.

Case No. 18 TR 0000 -C

JOHN DOE

Defendant

DIVERSION AGREEMENT-TRAFFIC

Street Address: MAIN STREET

City, State and Zip Code: Independence, Kansas 67301

Sex: XXXX Race: XXXX DOB: XX-XX-XXXX

Driver's License No. K00000000

Complaint Filing Date: January 1, 2018

THIS AGREEMENT is dated this ____ day of xxxxxxxxxx, 2018.

Charges and facts stipulated to: On or about the ____ day of ____ 2018, Defendant above named, operated a vehicle on the streets or highways of Montgomery County, Kansas, as more specifically stated in the Complaint filed in this case, and the following additional evidence, if any, all of which are incorporated herein by reference, are stipulated to:

- A. Kansas Highway Patrol Citation
- B. Defendant operated a motor vehicle

Fine: Court costs of \$ ____ and the standard fine of \$ ____.

MUST be paid in full at the time of filing of this Diversion Agreement.

Diversion costs: Defendant shall pay the diversion costs of \$200.00 at the time of filing of this Diversion Agreement.

Diversion Officer: Traffic Attorney
Judicial Center
300 B. Main St.
Independence, KS 67301
(620) 330-1020

Term of Diversion: 180 days.

Special conditions of the Diversion:

- 1) Defendant states that he has read the conditions in full and agrees to comply with them.

Defendant

County Attorney

CONDITIONS OF PRETRIAL DIVERSION AND DIVERSION AGREEMENT

You have been charged with committing one or more violations of Kansas Statutes regulating traffic. Upon your acceptance of responsibility for those violations and after investigation of the violations and your background, it appears that you are eligible for diversion and that the interest of the State of Kansas, your own interest, and the interest of justice will be best served by the following procedure, THEREFORE;

On the authority of the prosecuting attorney, prosecution on this offense shall be deferred for a period of ninety (90) days from the date hereof, provided you abide by the conditions and the requirements of the program as set forth in this Diversion Agreement.

Should you violate any of the conditions of this agreement during the diversionary period, the prosecuting attorney may ask the Court to reinstate this case on the trial docket for further prosecution. If you violate any of the conditions, and prior to re-initiating prosecution, you will be furnished notice at your last known address as shown in the prosecuting attorney's files, specifying the conditions of this Diversion Agreement you have violated.

If, upon completion of your period of supervision, the prosecuting attorney's records reflect that you have complied with all of the conditions of this Diversion Agreement, the Complaint will be dismissed with prejudice.

CONDITIONS OF PRETRIAL DIVERSION

1. You shall not violate any federal, state, or local law. You shall immediately contact your diversion officer if arrested by any law enforcement officer.
2. You shall maintain your current residence. If you intend to move to another residence, you shall inform the prosecuting attorney in writing before moving. You shall notify the prosecuting attorney of any change of address in writing within five (5) days of any change. If any mail is returned after having been mailed to you addressed to your last known address, such return will be considered prima facie evidence that you have failed to meet this condition of the Diversion Agreement.
3. You shall report in writing to your diversion officer within ten (10) days prior to the termination of the Diversion Agreement to confirm that you have not been issued any additional traffic ordinance or state traffic statute violations during the period of diversion.
4. You shall comply with all other conditions of diversion.

DEFENDANT'S WAIVER OF RIGHTS AND STIPULATIONS

I, the Defendant herein named, by agreeing to this Diversion, do hereby waive all my rights to a speedy trial under the laws and statutes of the State of Kansas and under the constitutions of the State of Kansas and the United States.

I agree that if I violate the terms and conditions of this Diversion Agreement, this case will proceed to trial based upon the charge and facts stipulated to as shown on the reverse side hereof, including all evidence attached to this Diversion Agreement, if any. Therefore in return for acceptance into the diversion program, I hereby stipulate and agree to the facts stated as the "charge and facts stipulated to" herein, the facts alleged in the Complaint filed in this case, and the facts as contained in the additional evidence attached to this Agreement, if any.

WAIVER OF RIGHTS TO COUNSEL

I do hereby state that I have read and reviewed the entire Diversion Agreement, including the above Waiver of Rights and Stipulations, and the same have been explained to me. I understand that I have the right to consult with counsel of my choosing before entering into this Diversion Agreement and understand that I may be eligible for court appointed attorney's services if I am unable to hire an attorney to represent me in this matter. However, by my signature below I acknowledge both my right to counsel and my free, knowing, voluntary and intelligent waiver of that right and that I desire to proceed without further assistance of counsel herein. I have read all of the Diversion Agreement, including the waivers above, and will comply with its terms.

Defendant

STATE OF KANSAS

Plaintiff

Vs.

Case No. 18 TR 0000 -C

JOHN DOE

Defendant

ORDER OF CONTINUANCE AND DISMISSAL-TRAFFIC

NOW ON THIS _____ day of _____, 2017, the above-entitled matter comes on before the Court. The State appears by and through County Attorney, Larry Markle, The Defendant appears in person.

WHEREUPON, THE COURT FINDS THAT:

1. A Diversion Agreement has been filed in the above captioned case.
2. This matter should be continued by agreement of the parties.
3. Unless notified otherwise, this matter shall be dismissed 180 days from this date.

JUDGE

SUBMITTED BY:

Defendant

County Attorney

MONTGOMERY COUNTY ATTORNEY'S OFFICE
APPLICATION FOR DIVERSION

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

SOCIAL SECURITY NUMBER: _____

PHONE NUMBER: _____

DATE OF BIRTH: _____ AGE: _____

SEX: _____ MALE _____ FEMALE RACE: _____

MARITAL STATUS: _____ Married _____ Single

IF MARRIED, GIVE SPOUSE'S NAME: _____

DEPENDENTS (List how many and ages) _____

WORK EXPERIENCE:

CURRENT EMPLOYER:

NAME: _____ LOCATION: _____

JOB TITLE: _____ LENGTH OF EMPLOYMENT: _____

SALARY: _____ MONTHLY _____ HOURLY _____ WEEKLY

PREVIOUS WORK EXPERIENCE:

NAME: _____ LOCATION: _____

JOB TITLE: _____ LENGTH OF EMPLOYMENT: _____

SALARY: _____ MONTHLY _____ HOURLY _____ WEEKLY

REASON FOR LEAVING: _____

EDUCATIONAL BACKGROUND:

ELEMENTARY: _____ JUNIOR HIGH: _____

HIGH SCHOOL: _____ YEAR OF GRADUATION: _____

COLLEGE: _____ YEAR OF GRADUATION: _____

HOW LONG HAVE YOU LIVED IN MONTGOMERY COUNTY? _____

IF LESS THAN FIVE (5) YEARS, GIVE PREVIOUS ADDRESSES: _____

MEDICAL HISTORY:

PHYSICAL CONDITION: _____ POOR _____ FAIR _____ EXCELLENT

LIST ANY PREVIOUS PSYCHIATRIC OR PSYCHOLOGICAL TREATMENT RECEIVED.
PLEASE STATE WHEN AND WHERE. (Write on back if necessary)

1. _____

2. _____

3. _____

PREVIOUS CRIMINAL RECORD:

(Attach additional page or write on back if needed)

OFFENSE

DATE

LOCATION

OFFENSES FOR WHICH DIVERSION IS REQUESTED:

ARE THERE ANY FACTS ABOUT THIS INCIDENT WHICH YOU THINK WE SHOULD
CONSIDER WHICH MAY EXCUSE YOUR ACTIONS OR INVOLVEMENT IN THIS
INCIDENT?

EXPLAIN WHY YOU FEEL YOU COULD SUCCESSFULLY COMPLETE THE DIVERSION
PROGRAM:

STATE IN DETAIL THE FACTS WHICH CAUSED THE CHARGES TO BE FILED:

I have read the foregoing Application. All of the information is true and correct. I understand that if any of the foregoing information is not true and correct, this may be a basis for denial of diversion or revocation of diversion.

Defendant

Date

DUI DIVERSION INFORMATION SHEET

You have been charged with driving under the influence of alcohol and/or drugs. As a first time offender the Montgomery County Attorney will consider your application for entry into the Montgomery County Diversion Program only if you have not:

- a. Previously participated in Diversion of an alcohol related offense.
- b. Previously been convicted of or pleaded nolo contendere to a violation of an alcohol related offense.
- c. At the time of the alleged alcohol related offense you were not involved in a motor vehicle accident or collision resulting in personal injury or death.

Diversion means that the County Attorney will postpone for a period of six (6) months any criminal proceedings (including trial) relating to the DUI charge against you. In order to apply for Diversion, you must do the following:

- a. You MUST pay a \$300.00 non-refundable diversion application fee to the Montgomery County Clerk of the District Court and provide a receipt for this payment to the Montgomery County Attorney's Office.
- b. Read, sign and date this DUI Diversion Information Sheet. Provide this Information Sheet to the Montgomery County Attorney's Office.

You will be required to obtain and pay \$150.00 for a Drug/Alcohol Evaluation (ADSAP) prior to a Diversion being approved by the Montgomery County Attorney. You MUST obtain a Drug/Alcohol Evaluation (ADSAP) with one of the following agencies:

ROAD TO RECOVERY
3751 W. Main St., P.O. Box 688
Independence, KS 67301
Phone: 620-331-1748

FOUR COUNTY MENTAL HEALTH CENTER
1601 W. 4th
Coffeyville, KS 67337
Phone: 620-251-8180

**ANY EVALUATION BY AND OTHER AGENCY OTHER THAN THOSE
LISTED ABOVE MUST BE APPROVED IN WRITING BY THE
MONTGOMERY COUNTY ATTORNEY PRIOR TO OBTAINING THE
EVALUATION.**

YOU MUST PAY A FEE OF \$150.00 FOR THE DRUG/ALCOHOL EVALUATION (ADSAP) DIRECTLY TO THE AGENCY PROVIDING THE EVALUATION.

You must also provide a copy of your receipt for payment of your \$300.00 Diversion Application fee to the agency providing your Drug/Alcohol Evaluation.

If you are accepted into the Diversion Program, you will be required to pay the following fees, costs and assessments:

- A. To the Clerk of the District Court of Montgomery County, Kansas prior to the Drug/Alcohol (ADSAP) Evaluation; Diversion Application fee of \$300.00.
- B. To the evaluating agency a fee of \$150.00 for the Alcohol/Drug (ADSAP) Evaluation, prior to the Alcohol/Drug (ADSAP) Evaluation.
- C. To the CLERK OF THE DISTRICT COURT:
 - 1. A fine of \$750.00 for the DUI
 - 2. Court costs of \$108.00
 - 3. Attorney fees of \$150.00 (if appointed)
 - 4. Booking/Processing Fee of \$45.00 (if applicable)
 - 5. Any additional diversion fees and fines for additional charges, as instructed by the County Attorney.

In addition to the above you shall:

- 1. Attend and complete an Alcohol/Drug Information School at one of the agencies listed on page #2 and provide proof of completion to the Montgomery County Attorney's Office PRIOR to the filing of the Diversion Agreement. **COMPLETION OF AN ALCOHOL/DRUG INFORMATION SCHOOL FROM ANY OTHER AGENCY NOT LISTED ON PAGE #2 WILL NOT SATISFY THIS REQUIREMENT UNLESS PRIOR WRITTEN APPROVAL IS OBTAINED FROM THE MONTGOMERY COUNTY ATTORNEY.**
- ** A fee of \$100.00 MUST be paid directly to the school/agency for this program.
- 2. Agree to waive your constitutional rights to a speedy trial and a jury trial on the charges against you.

3. Agree to abide by whatever conditions the Montgomery County Attorney feels appropriate in your case. These may include:
 - a. Paying restitution to persons injured or damaged as a result of your actions.
 - b. Attending counseling sessions.
 - c. Maintaining gainful employment.
 - d. Not violating the law.
 - e. Not committing any additional alcohol related offenses.

If you are accepted for Diversion, you will be required to sign a Diversion Agreement which sets out what you must do in order to complete the program.

The Diversion Agreement shall include a stipulation, agreed to by yourself and the County Attorney, of the facts upon which the charge is based and a provision that if you fail to fulfill the terms of the specific Diversion Agreement and the criminal proceedings on the Complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the Stipulation of Facts relating to the Complaint.

If you successfully complete the Diversion Program, the County Attorney will have the DUI charge against you dismissed with prejudice. If you fail to live up to the terms of the Diversion Agreement, the County Attorney will resume the criminal proceedings against you as provided for by K.S.A. 12-4416 and amendments thereto.

The following deadlines MUST be satisfied:

1. The \$300.00 non-refundable diversion application fee must be paid to the Clerk of the District Court the week of the first formal court appearance.
2. The signed and dated Diversion Information Sheet must be delivered to the Montgomery County Attorney's Office the week of the first formal court appearance date.
3. The Drug/Alcohol Evaluation (ADSAP) MUST be completed and the completed Diversion Application delivered to the Montgomery County Attorney's Office with six (6) weeks of the first formal court appearance date.

4. The Alcohol/Drug Information School MUST be completed and written proof of satisfactory completion MUST be provided to the Montgomery County Attorney's Office with nine (9) weeks of the first formal court appearance date.
5. All prerequisites to Diversion MUST be completed and written proof of completion provided to the Montgomery County Attorney's Office within twelve (12) weeks of the first formal court appearance date.

Failure to comply with any of the foregoing deadlines may, in and of itself and without further notice to the applicant, result in withdrawal of the offer of Diversion, or, in the sole discretion of the County Attorney, imposition of a new \$300.00 diversion application fee.

THE DEFENDANT UNDERSTANDS AND AGREES THAT ALL CHARGES OTHER THAN DUI WILL BE DISPOSED OF EITHER BY SEPARATE PLEADINGS OR BY PLEAS OF NOLO CONTENDERE OR GUILTY DULY ENTERED IN OPEN COURT, UNLESS IN THE SOLE DISCRETION OF THE MONTGOMERY COUNTY ATTORNEY, SUCH ADDITIONAL CHARGES ARE DISPOSED OF AS PART OF THE ANTICIPATED DUI DIVERSION AGREEMENT. IF DISPOSED BY DIVERSION, ADDITIONAL DIVERSION FEES AND FINES WILL BE ASSESSED AND SUCH FEES AND FINES MUST BE PAID IN FULL IN THE SAME MANNER AS SET FORTH ABOVE PER DUI FINES AND ASSESSMENTS.

THE MONTGOMERY COUNTY ATTORNEY HAS THE RIGHT TO WITHDRAW AN OFFER OF A DIVERSION AT ANY TIME PRIOR TO THE APPLICANT'S FULL AND COMPLETE FULFILLMENT OF THE CONDITIONS PRECEDENT TO FILING OF A DIVERSION AGREEMENT.

DEFENDANT

DATE

COUNTY ATTORNEY'S PROCEDURE FOR DIVERSIONS

1. The defendant must fill out and submit the application form.
2. The County Attorney's Office will check for criminal records through NCIC and KBI.
3. The defendant must be charged with a crime specified for eligibility in the diversion guideline:
 - a. **DUI - 1st**
 1. Non-Injury accident (excludes person charged with DUI); and
 2. Non-Death Accident.
 - b. **Fish and Game Violations:**
 1. The county attorney may enter into a diversion agreement in lieu of further criminal proceedings on a complaint for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, if such diversion carries the same penalties as the conviction for the corresponding violations. *The minimum diversion fee is \$100.00*
 2. If the defendant has previously participated in one or more diversions for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, then each subsequent diversion shall carry the same penalties as the conviction for the corresponding violations. *The county attorney may also charge an additional diversion fee.*
 - c. **Traffic Infractions/Misdemeanors:**
 1. Driver's License must be in good standing before the Diversion is filed with the Court.
 2. Insurance current at time of offense or brought current before the Diversion is filed with the Court.
 3. On speeding cases, no more than 30 m.p.h. over posted maximum; and no speeds in excess of 100 m.p.h.
 4. On diversion of a ticket, the minimum diversion fee will be \$100.00. The fine and costs will also be collected.
 5. The Diversion Agreement must be in this office, together with all costs, fines and diversion fees, prior to the court date on the Notice to Appear. Failure to return the Diversion Agreement, along with the required fees, to this office prior to the court date on the Notice to Appear may result in either an additional administrative fee or revocation of the diversion offer.
 6. Eligible offenses: All cases, EXCEPT where there has been an accident or in which drugs and/or alcohol is involved.
 7. The offender can have only 2 other moving violations in the last year immediately preceding issuance of the ticket.

8. This privilege cannot be exercised more often than twice every 12 months.
9. There can be no alcohol or drug related offenses.
10. Length of Diversion shall be 90 days for speeds 1-15 MPH over the speed limit and other minor offenses and Six (6) months for speeds 16-30 MPH over the speed limit.

d. Other Crimes: Factors to consider. In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the county attorney shall consider at least the following factors among all factors considered:

1. The nature of the crime charged and the circumstances surrounding it;
2. Any special characteristics or circumstances of the defendant;
3. Whether the defendant is a first-time offender and if the defendant has previously participated in diversion, according to the certification of the Kansas bureau of investigation or the division of vehicles of the department of revenue;
4. Whether there is a probability that the defendant will cooperate with and benefit from diversion;
5. Whether the available diversion program is appropriate to the needs of the defendant;
6. The impact of the diversion of the defendant upon the community;
7. Recommendations, if any, of the involved law enforcement agency;
8. Recommendations, if any, of the victim;
9. Provisions for restitution; and
10. Any mitigating circumstances.

e. A Defendant shall not be eligible for Diversion if:

1. The complaint alleges a violation of K.S.A. 8-1567 and amendments thereto and the defendant: (A) Has previously participated in diversion upon a complaint alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute; (B) has previously been convicted of or pleaded *nolo contendere* to a violation of that statute or a violation of a law of another state or of a political subdivision of this or any other state, which law prohibits the acts prohibited by that statute; or (C) during the time of the alleged violation was involved in a motor vehicle accident or collision resulting in personal injury or death; or
2. The complaint alleges that the defendant committed a class A or B felony or for crimes committed on or after July 1, 1993, an off-grid crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity level 1 or 2 felony for drug crimes.
3. If all criteria are met, and
 - a. A Defendant is not represented by an Attorney, the County Attorney's Office or ADSAP officer, will draft a Diversion and

contact the defendant to review the agreement. If approved, the agreement will be filed.

b. A Defendant is represented by an Attorney, the Attorney, will draft a Diversion and contact the defendant to review the agreement. If approved, the agreement will be filed.

4. The defendant must pay the costs, fines, fees and restitution prior to the filing of the Diversion.

5. Diversion agreements will be reviewed regularly to check compliance; if violated, a Motion to Revoke will be filed.



LARRY MARKLE
MONTGOMERY COUNTY ATTORNEY

Effective: 7/1/08

Exhibit C

Lauren Bonds

From: Larry Markle <lmarklelawyer@gmail.com>
Sent: Thursday, March 29, 2018 1:26 PM
To: Lauren Bonds
Subject: Re: Public Records Request Regarding Diversion Policies

Ms. Bonds:

My office has had an official Diversion policy since I was appointed CA in 2006. Please send \$20.75 to:

Montgomery County Attorney
Attn: Larry Markle
300 E. Main
Independence, KS 67301.

This fee is for the staff time and copying expense associated with this request. I will respond to your KORA request upon receipt of payment

Larry Markle
MG County Attorney
300 E. Main
Independence, KS 67301

On Tue, Mar 27, 2018 at 5:13 PM, Lauren Bonds <lbonds@aclukansas.org> wrote:
Good Evening Mr. Markle,

Please find attached an open records request regarding Montgomery County's pre-trial diversion policies. Feel free to call me if you have any questions or need additional information to process this request.

Best,

Lauren

Lauren Bonds

Legal Director

Direct Dial: (913) 490-4114

ACLU

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Kansas

--

Larry Markle
COUNTY ATTORNEY
(620) 330-1020 Independence

Exhibit D



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Kansas

6701 W. 61st Street,
Suite 210
Overland Park, KS 66202
T/913-490-1100
www.aclukansas.org

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Roberta Eveslage
Robert Eye
Mark Johnson
Raymond Rico
Jeffrey Wicks

Micah W. Kubic
Executive Director

May 30, 2018

Larry Markle
Montgomery County Attorney
300 East Main Street
Independence, KS 67301

Re: Diversion Practices in Montgomery County

Dear Mr. Markle,

Thank you for your April 23, 2018 letter responding to the ACLU of Kansas's open records request. We appreciate the information you have provided. However, it remains unclear whether your office is fulfilling its statutory duties under K.S.A. §22-2907(2) and K.S.A. §22-2907(3). In particular, we are concerned that Montgomery County Attorney's Office ("MCAO") is not informing defendants in writing about diversion opportunities and is failing to provide defendants with a diversion conference, as required by law.

While county prosecutors have discretion to set eligibility requirements for diversion programs in their jurisdiction, Kansas law explicitly requires them to provide written notice of these policies and guidelines to all defendants. *See* K.S.A. §22-2907(3). The notice requirement promotes awareness about diversion and eliminates guesswork surrounding which offenses are eligible.

The diversion statute further requires county attorneys to provide eligible defendants with the opportunity to participate in an in-person conference and be represented by counsel during their meeting with the prosecutor. *Id.* The conference gives defendants the opportunity to learn about the requirements of diversion and negotiate the terms their agreement.

Our open records letter requested documents detailing your office's process and procedures for notifying defendants about MCAO's pretrial diversion program. None of the documents that your office provided addressed how defendants are notified about diversion. Based on an investigation, which included conversations with members of the local defense bar, it is our understanding that defendants do not receive written notice of Montgomery County's diversion program. Written policies and applications are not publicly

Mr. Larry Markle, County Attorney
May 30, 2018
Page 2

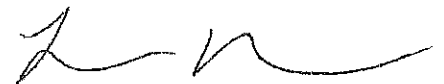
available in your office, at the District Courthouse, or on the MCAO website.¹ Moreover, copies of the MCAO diversion guidelines are reportedly not provided to defendants at their first appearance.

We have also learned that the MCAO does not consistently provide eligible defendants with the opportunity to participate in a diversion conference. MCAO has regularly failed to initiate conferences with defendants who have been determined to be eligible for diversion. Further, there is no mention of the right to a diversion conference in the guidelines or sample agreement provided by your office. We request that you provide a description of your current practices for initiating and conducting diversion conferences. To the extent records on this subject exist, we request, pursuant to the Kansas Open Records Act (KORA), all documents related to MCAO diversion conferences. K.S.A. 45-215 *et. seq.* In accordance with KORA we look forward to receiving a response to this request within three (3) business days. If the request is denied, please provide a basis for the denial within three (3) business days.

Please let us know if we have inaccurate information. If the above information regarding your current diversion practices is correct, however, they violate K.S.A. § 22-2907, and we urge you to implement policies that fulfill your obligations. The MCAO can meet its statutory obligation by completing the following steps: (1) adopt a method for notifying defendants of the office's diversion policies and guidelines in writing; (2) start implementing the aforementioned notification method; and (3) begin providing in-person diversion conferences for all diversion eligible defendants. Further, MCAO should clarify in its guidelines what charges are eligible for diversion in addition to listing which offenses are excluded.

Please respond with a plan to begin complying with the statute no later than June 6, 2018. If we do not hear from you, we will consider taking further legal action.

Sincerely,



Lauren Bonds
Legal Director
ACLU of Kansas

cc: Somil Trivedi
Trone Center for Equality

¹ <http://mgcountyks.org/county-depts/county-attorney>

Exhibit E

Lauren Bonds

From: Larry Markle <lmarklelawyer@gmail.com>
Sent: Wednesday, May 30, 2018 1:14 PM
To: Lauren Bonds
Subject: Re: Diversion Practices in Montgomery County

Ms. Bonds:

This is to acknowledge your most recent letter dated May 30, 2018. This office has fully complied with your KORA request. Therefore, no further responses will be made.

Take whatever legal action you fell appropriate.

Larry Markle
MG County Attorney

On Wed, May 30, 2018 at 12:56 PM, Lauren Bonds <lbonds@aclukansas.org> wrote:
Dear Mr. Markle,

Please find attached a letter from the ACLU of Kansas outlining our questions and concerns about diversion practices in Wilson County. Feel free to contact me at (913) 490-4114 if you would like to discuss.

Best,

Lauren

Lauren Bonds

Legal Director

Direct Dial: (913) 490-4114



Larry Markle
COUNTY ATTORNEY
(620) 330-1020 Independence

IN THE SUPREME COURT OF THE STATE OF KANSAS

KANSAS CROSSROADS FOUNDATION;
and KARENA WILSON;

Petitioners,

vs.

LARRY MARKLE, in his official capacity as
County Attorney of Montgomery County;

Respondent.

Original Action No. _____

DECLARATION OF JACK H. KYLE, JR.

1. I, Jack H. Kyle, Jr., have personal knowledge of the matters in this Declaration and could and would competently testify to these facts.
2. I am 54 years old and a resident of Montgomery County, Kansas. I have worked in Wilson County for 11 years.
3. I have been the Executive Director of the Kansas Crossroads Foundation-New Life Cooperative since I founded the organization in 2014. The Kansas Crossroads Foundation (KCF) is a faith-based 501(c)(3) nonprofit incorporated in Kansas with an office located in Neodosha, Wilson County, Kansas.
4. KCF has a mission to provide economic development opportunities and addiction rehabilitation services to the rural poor in Southeast Kansas, including those from Montgomery County.
5. KCF has two full-time staff, including myself and Jennifer Davis. Ms. Davis and I each earn a salary of \$20,000 per year.
6. In addition to staff, KCF has three volunteers who work approximately 20 hours per week.

7. KCF has five core programs to advance its mission: an alternative energy cooperative, a micro-farming cooperative, a consignment store, a homeless shelter, and addiction recovery counseling.
8. Addiction recovery is the primary service that KCF provides, and many of our other programs are designed as wrap-around support for our addiction recovery clients, including the homeless shelter and the consignment store.
9. KCF offers drug rehabilitation program participants one-on-one counseling, housing support, community connections, and employment assistance. While all four components of that program are important, stable employment is a strong predictor of recovery success and employment assistance has become a priority for KCF over the last two years.
10. Participation in the program is open to any person who is struggling with addiction and is willing to commit to staying sober and taking responsibility for their recovery.
11. Many of our clients are incarcerated in Montgomery County jail in Independence, Kansas. To serve our incarcerated clients, KCF spends significant time at the Montgomery County jail to conduct counseling and mentorship sessions.
12. KCF Board Member Susan Whitfield Harding conducts similar counseling sessions once per week at the Montgomery County jail. Many of the individuals Harding counsels are incarcerated on addiction related charges including misdemeanor possession.
13. Harding counsels between five and eight clients in Montgomery County jail each week.
14. In my experience as a drug rehabilitation support minister, extended periods of incarceration make it more difficult for people to restart their lives and recover from addiction. Many of our incarcerated clients lose their job, housing, and other critical resources while they are in prison. Additionally, the stigma of serving time in jail makes it more difficult for people to have successful, independent lives once they are released.
15. Incarceration also makes it more difficult for KCF to provide drug rehabilitation services. KCF must travel to Montgomery County jail to provide treatment. Moreover, we have to divert resources away from other programs to help provide jail-to-community transition support services to clients who were recently incarcerated.
16. Travel to Montgomery County jail requires KCF staff and volunteers to drive 45 minutes round-trip twice every week. Not only does the travel time reduce staff and volunteer

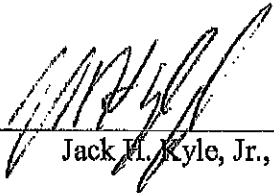
time available for other tasks and programs, KCF must reimburse staff and volunteers for gas used traveling to the jail. For instance, KCF reimburses Harding up to \$130 per week to compensate her for travel to and from the jail Independence.

17. Once incarcerated clients are released, KCF often must spend time and resources to help them reintegrate into society. KCF is the only support system many clients have when they are released from jail, and we assist them with any issue that may compromise their ability to stay in the recovery program.
18. First, KCF staff and volunteers drive clients to and from meetings with their parole and probation officers. On average, KCF staff and volunteers spend approximately 12 hours per month helping clients meet their parole and probation obligations. I estimate that we reimburse volunteers \$100 per month for their help transporting clients to and from probation and parole meetings.
19. Second, KCF staff and volunteers spend at least seven hours each month helping clients recover identity documents that are lost during long periods of incarceration. I estimate that approximately 30% of our clients do not have a valid photo ID when they are released from jail. Nearly 10% do not have any type of documentation proving their identity.
20. Third, many of our clients have no housing when they are released from jail. We operate a shelter that houses approximately six people at a time. Temporary housing is in high demand among our client base. Therefore, KCF staff and volunteers spend considerable time finding housing options for recently released clients.
21. In four years of operating KCF, I have found that stable employment is among the most important predictors of success in maintaining sobriety. Therefore, KCF has made connecting drug rehabilitation clients with jobs our top priority.
22. KCF has an arrangement with Cobalt Boats, LLC, a boat manufacturing company located in Neodesha, Kansas. KCF and Cobalt entered into a partnership where we refer clients to the company in exchange for a charity donation.
23. While a job at Cobalt helps many of our clients, it is not an ideal fit for recovering addicts who are from Neodesha and have negative influences and addiction triggers in the city. Consequently, KCF is actively searching for businesses similar to Cobalt located in other communities that would be willing to hire people struggling with addiction.

24. Locating a company to whom KCF can make employment referrals has been a time consuming and labor-intensive process. I would like to dedicate more time and money to this effort. However, we have had to divert time and resources away from employer recruiting to provide incarceration-related services.
25. KCF would spend less staff time and money helping with parole and identity assistance if Montgomery County did not have a practice of using the jail to warehouse the poor. The over-incarceration of people struggling with addiction places stress on our organization.
26. Many of our clients serve jail sentences for low-level drug offenses and nonviolent misdemeanors.
27. I estimate that approximately 10% of our clients are individuals who have been incarcerated in Montgomery County for nonviolent misdemeanor offenses. It is my understanding that some of our clients convicted on drug charges would be eligible for a diversion under the under the Montgomery County Attorney's current diversion policies.
28. Even though many of our clients should be eligible to be considered for diversion, I understand that the Montgomery County Attorney's Office does not provide written notice of diversion opportunities to them.
29. Access to diversion unequivocally would help our clients in their recovery. First, diversion would reduce the amount of time our clients spend in jail, allowing them to maintain housing, employment, and relationships with their families. Second, diversion would increase many of our clients' employment opportunities.
30. A criminal conviction compounds the stigma most of our clients already face as former drug addicts. Generally, the opportunity to apply for and possibly participate in diversion would enable our clients to focus on rehabilitation rather than rebuilding their lives after a long stint in jail.
31. Increasing diversion access for eligible defendants would also benefit KCF. The time KCF staff and volunteers spend on providing incarceration-related services has taken away from time available for other important KCF work, including expanding employment referral services, building community connections, and increasing the capacity of our various cooperatives.

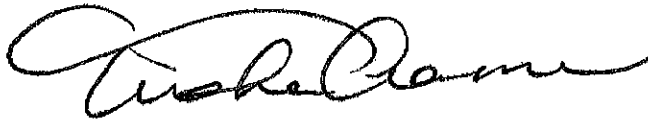
I declare under penalty of perjury that the foregoing statements, including all statements in this Declaration, are true and correct.

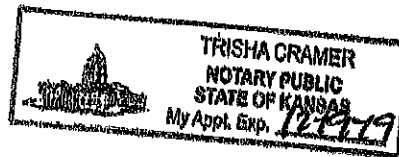
Executed on June 7, 2018.



Jack H. Kyle, Jr.,

Wilson County, Kansas
Signed before me on June 7th, 2018





IN THE SUPREME COURT OF THE STATE OF KANSAS

KANSAS CROSSROADS FOUNDATION;
and KARENA WILSON;

Petitioners,

vs.

LARRY MARKLE, in his official capacity as
County Attorney of Montgomery County;

Respondent.

Original Action No. _____

DECLARATION OF KARENA WILSON

1. I, Karena Violet Wilson, have personal knowledge of the matters in this Declaration and could and would competently testify to these facts.
2. I am 19 years old and a resident of Montgomery County, Kansas. I have lived in Independence, Montgomery County, Kansas since I was about 11 years old.
3. Prior to my June 2017 arrest for theft, I had never been charged with a crime.
4. On or about June 14, 2017, I was driving around Independence with my boyfriend. A person whom we did not know well asked us for a ride to the north part of town. My boyfriend agreed and the person got in our car. When we arrived at a liquor store, the person suggested we start breaking into soda machines. He then got out of the car and broke into a soda machine and took the coin collection box inside.
5. The Independence Police Department learned that we had driven the person who had broken into the soda machine to the liquor store. Even though my boyfriend and I assisted the police in identifying the person who broke into the machines, we were both charged with theft as accomplices.
6. My bond was set at \$1,500, and I spent three days in jail.
7. I was initially charged with felony theft of property of \$1,500 or less from three businesses in 72 hours.

8. I had to appear in court approximately five times for this case.
9. On or about December 12, 2017, my charges were reduced to three counts of misdemeanor theft of property less than \$1,500. I pled guilty to the misdemeanor charges.
10. I was sentenced to one year of probation. The terms of my probation require me to pay approximately \$2,300 in fines. I have made payments toward the fine whenever I can but still have close to \$2,000 left to pay.
11. I am also required to be employed as part of my probation. Even though I have a job paying minimum wage as a housekeeper at a hotel, my probation officer has told me that I need to get a higher paying job at a factory.
12. I had to spend an additional three days in jail in April 2018 for a probation violation.
13. At no point before I took my plea deal did anyone from the Montgomery County Attorney's Office (MCAO), including County Attorney Larry Markle, provide me with written notice of the MCAO's diversion policies and guidelines.
14. Additionally, nobody in the MCAO ever verbally told about their diversion program. Because this is my first time getting in trouble with the law, I had never heard of a diversion.
15. Since being sentenced to probation, I have learned that the MCAO will consider offering diversions to people charged with misdemeanors if it is their first time offense and they will otherwise benefit from diversion.
16. I would have applied for the MCAO diversion program if the MCAO had given me notice of any kind.
17. Even if MCAO ultimately denied my application, I feel that I would have benefited from being fully informed about my options.
18. The opportunity to apply for a diversion would have given me the possibility of a second chance to have a clean criminal record and could have helped me avoid my current and likely future limitations in employment and other endeavors.

I declare under penalty of perjury that the foregoing statements, including all statements in this Declaration, are true and correct.

Executed on June 6, 2018.

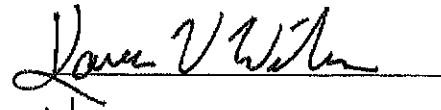

Karena Wilson

Exhibit 19

IN THE SUPREME COURT OF THE STATE OF KANSAS

KANSAS CROSSROADS FOUNDATION)	
And KARENA WILSON,)	
)	
Petitioners,)	
)	Case No. 119493
vs.)	
)	
LARRY MARKLE, in his official capacity)	
as County Attorney of Montgomery County,)	
)	
Respondent.)	

RESPONSE TO PETITION FOR WRIT OF MANDAMUS

COMES NOW Respondent, Larry Markle, by and through counsel of record, and provides the following Response to Petitioners' Petition for Writ of Mandamus pursuant to the Court's Order of August 29, 2018, and Supreme Court Rule 9.01(c)(3):

I. INTRODUCTION

Petitioners, Kansas Crossroads Foundation (hereinafter "KCF") and Karena Wilson (hereinafter "Wilson") allege that they have suffered an "injury" or have an interest in whether the Montgomery County Attorney's office is properly enforcing K.S.A. 22-2907 et seq., regarding diversion programs. The Petitioners allege that the diversion program in Montgomery County is insufficient and are requesting this Court to issue an order compelling Larry Markle, the County Attorney in Montgomery County, to alter his current diversion program.

For the reasons set forth below, Respondent requests the Court deny this Petition as neither of the Petitioners have standing to bring a writ for mandamus, the relief requested is improper as the statute at issue relates to the discretion of a County Attorney, and the

Petitioners are attempting to stretch the language of the statutes at issue beyond the intent of the legislature.

II. RESPONSE TO PETITION FOR WRIT

Respondent provides the following Response to the allegations and averments by Petitioners in their Petition for Writ of Mandamus:

I. JURISDICTION

Respondent admits that the Supreme Court of Kansas may exercise jurisdiction over this matter pursuant to K.S.A. 60-801 et seq., Art. III, § 3 of the Kansas Constitution, and Rule 9.01(a) of the Rules of the Kansas Supreme Court.

However, to the extent that Petitioner is alleging that no other Court has jurisdiction over this matter, Respondent disagrees as this Petition for Writ could have and should have been filed in the District Court of Montgomery County. This Court's jurisdiction is concurrent and a writ can also be brought in a lower court. *Ambrosier v. Brownback*, 304 Kan. 907, 909, 375 P.3d 1007 (2016).

Petitioners are only attacking the Montgomery County diversion program and the Petitioners would not have standing to bring this action against any other County; therefore, any holding in this matter would not have implications in any other county and this Court should decline to exercise jurisdiction.

II. PARTIES

Respondent admits that he is the County Attorney for Montgomery County, Kansas.

Respondent is without sufficient information or knowledge to admit or deny KCF's status as a 501(c)(3) organization or the status of its incorporation or exactly what services

KCF offers. Upon information and belief, after consultation with the Kansas Department of Health and Environment, it is Respondent's understanding that KCF does not in fact employ any licensed counselors in order to provide rehabilitation services for "drug and alcohol addiction". *See* Affidavit of Larry Markle, attached hereto as Exhibit A, ¶ 4. Further, upon information and belief, KCF operates more as an employment agency in and around Montgomery County offering to assist in locating employment for individuals that commit to its "program". *See* Exhibit A, ¶ 3, including all subparts.

Respondent admits that Petitioner Wilson was prosecuted in Montgomery County based on felony charges filed in June 2017, and pursuant to a plea deal which reduced her charges to misdemeanors, is currently serving a probation sentence. Respondent denies that Petitioner Wilson was eligible for diversion at the time of her charges in June 2017 in that she was originally charged with a felony, had two prior misdemeanor counts involving drugs and drug paraphernalia in 2014, and had made statements to employees of the Montgomery County Attorney's office about committing a felony by possessing methamphetamine. *See* Affidavit of Lisa Montgomery, attached hereto as Exhibit B, ¶ 10, including all subparts.

III. STATEMENT OF FACTS

Respondent admits he was appointed to serve as County Attorney for Montgomery County in 2006 and has continued to do so since that date. As part of his duties as County Attorney, Respondent and the Montgomery County Attorney's office maintains a written diversion program and has done so since Respondent's tenure. Respondent admits that he exchanged correspondence with the ACLU regarding Montgomery County's diversion program.

Respondent denies Petitioners' characterization of the Montgomery County diversion program. Since Respondent has been County Attorney for Montgomery County there has been a written diversion policy consistent with the Kansas Statutes. *See Exhibit A, ¶ 5*, including all subparts. The written diversion policy is open to the public and all attorneys and has been accessed by the public and attorneys on a regular basis. *See Exhibit A, ¶ 5a*.

Respondent has expended a significant amount of time in developing a diversion program for first time domestic violence offenders. *See Exhibit A, ¶ 5c*. This program began in 2007 with Four County Mental Health Services and is now administered by BIP Services. *See Exhibit A, ¶ 5c*.

Diversions are routinely granted and entered into for first time DUI, first time domestic violence, and other minor offenses. *See Exhibit A, ¶ 5d*. Diversions are not routinely granted for felonies unless there are extenuating circumstances. *See Exhibit A, ¶ 5e*.

Respondent denies Petitioners' summary of the charges and prosecution of Petitioner Wilson. Petitioner Wilson was in fact charged with Felony Theft in violation of K.S.A. 21-5801(a)(1). *See Exhibit B, ¶ 4a*. Further, Respondent's office was familiar with Petitioner Wilson based on an ongoing investigation regarding a separate case wherein the office was evaluating whether Petitioner would be charged with possession with intent to distribute methamphetamine. *See Exhibit B, ¶ 3b.*, including all subparts. The Montgomery County Attorney's office was also aware that Petitioner Wilson had two prior arrests for misdemeanor counts involving drugs and paraphernalia in 2014. *See Exhibit B,*

¶ 10b. As discussed in more detail below, based on this, Petitioner Wilson was not eligible for diversion and lacks standing in this matter.

Respondent denies that Petitioner KCF has been “injured” based on the Montgomery County diversion program. As discussed in more detail below, KCF lacks standing in this matter as it cannot show an injury or interest specific and peculiar to it, and not one that it shares with the community in general.

IV. GROUND FOR RELIEF

Respondent denies Petitioners’ interpretation of the statute as discussed in more detail below. Respondent notes that other District Attorneys and County Attorneys in Kansas do not support the conclusions being proffered by the ACLU regarding the Kansas diversion programs. *See* “A Response Based on Reality” by Marc Bennett, District Attorney for Sedgwick County, Kansas, attached hereto as Exhibit C.

V. RELIEF SOUGHT

As argued in more depth below, Respondent denies that the Petitioners are entitled to the Relief requested, and would request an Order from this Court denying Petitioners requested relief, denying Petitioners’ Writ for Mandamus, and for whatever other relief the Court deems just and proper.

III. POINTS AND AUTHORITIES

A. SUMMARY OF POINTS AND AUTHORITIES

1. Neither of Petitioners have standing to bring this Petition for Writ of Mandamus as neither KCF nor Wilson can show an injury or interest specific and peculiar to themselves, and not one that they share with the community in general.

2. A writ of mandamus is not appropriate in this matter as the statute at issue provides for discretionary duties of a County Attorney.

3. Petitioners' Petition must fail because their interpretation of the statute is erroneous and not what the legislature intended.

B. PETITIONERS LACK STANDING TO BRING THIS PETITION FOR WRIT OF MANDAMUS

As an initial matter, neither of the Petitioners have the requisite standing to bring this Petition for Mandamus. “[M]andamus will not ordinarily lie at the instance of a private citizen to compel the performance of a public duty[.]” *Kansas Bar Ass'n v. Judges of Third Judicial Dist.*, 270 Kan. 489, 491, 14 P.3d 1154 (2000) (citation and quotation omitted). Petitioner must be able to show “an injury or interest specific and peculiar to himself, and not one that he shares with the community in general[.]” *Id.* (citation and quotation omitted). In this case, neither KCF nor Wilson can show an injury or an interest “specific and peculiar” to itself.

As it relates to KCF, as noted above, KCF is not in fact a drug and alcohol rehabilitation program. *See* Exhibit A, ¶ 4. Instead, it operates similar to an employment agency helping to secure employment for individuals with a criminal and drug backgrounds. *See* Exhibit A, ¶ 3, including all subparts. Therefore, any “injury or interest” it has in having more individuals offered diversion versus incarceration is no different than any employer in the Montgomery County area.

Further, it is important to note, any individual that would be eligible for a diversion programs is also likely eligible for **probation** instead of incarceration. *See* Exhibit A, ¶

10. Therefore, there is no change in the number of individuals that are incarcerated as opposed to available for employment if offered the diversion program. Typically, incarceration only results based on a probation *violation*. See Exhibit A, ¶ 11, including all subparts. Any violation of probation would also likely lead to someone being removed from the diversion program. See Exhibit A, ¶ 11, including all subparts.

Further, similar to the requirements of probation, K.S.A. 22-2909(c) requires an individual that accepts a diversion agreement to pay fines and to participate in an alcohol and drug evaluation *by a licensed provider*, which KCF is not. Therefore, KCF's alleged "injuries" of having to transport and spend resources on those who are on probation would still be in place if more individuals were granted diversion. See *State v. Clevenger*, 235 Kan. 864, 867, 683 P.2d 1272 (1984) ("Thus, diversion is equal to punishment for a first offense except for the incarceration.").

As it relates to Wilson, based on her past history and the original charges, she was not eligible for diversion and therefore was not injured. See Exhibit B, ¶ 10, including all subparts. Wilson was initially charged with Felony Theft in violation of K.S.A. 21-5801(a)(1). See Exhibit B, ¶ 4a. Wilson was not considered for diversion due to her history with the Montgomery County Attorney's office, including an ongoing investigation regarding a separate case wherein the office was evaluating whether Petitioner would be charged with possession with intent to distribute methamphetamine and two prior arrests for misdemeanor counts involving drugs and paraphernalia in 2014. See Exhibit B, ¶¶ 3b., 10, including all subparts.

K.S.A. 22-2908(a)(3) specifically allows a prosecutor to consider the factor of

“whether the offender is a first-time offender...” in determining whether to offer diversion. In addition, the Montgomery County Attorney’s office diversion programs does not apply to felony charges. *See* Exhibit A, ¶ 5e. Further, as Wilson plead guilty to lesser charges and accepted probation, which she has since violated, she is no longer a candidate for diversion and her claims are moot. *See* Exhibit B, ¶ 8.

Therefore, as an initial matter, Petitioners’ Petition should be dismissed based on lack of standing. In the alternative, if Petitioners’ Petition is not denied, Respondent would request that this matter be referred to a District Court pursuant to Rule 9.01(d) of the Rules of the Kansas Supreme Court for testimony on this issue.

C. A WRIT OF MANDAMUS IS NOT AN APPROPRIATE REMEDY AS THE STATUTE AT ISSUE IS DISCRETIONARY

A writ of mandamus should be issued only when a respondent’s “legal duty is clear,” and should not be invoked to control a public official’s discretion. *Kansas Medical Mut. Ins. Co. v. Svaty*, 291 Kan. 597, 620, 244 P.3d 642 (2010); *Kansas Bar Ass’n v. Judges of the Third District*, 270 Kan. at 491. Simply put, “mandamus cannot be invoked to compel a discretionary act.” *Ambrosier*, 304 Kan. at 907.

By the clear language of the statute, who is eligible for diversion and who should be offered diversion is at the discretion of the County Attorney:

After a complaint has been filed charging a defendant with commission of a crime and prior to conviction thereof, and after the district attorney has considered the factors listed in K.S.A. 22-2908, **if** it appears to the district attorney that diversion of the defendant would be in the interests of justice and of benefit to the defendant and the community, the district attorney **may** propose a diversion agreement to the defendant. The terms of each diversion agreement shall be established by the district attorney in accordance with K.S.A. 22-2909.

K.S.A. 22-2907(1) (emphasis added).

This Court has previously held that the application of a diversion policy is at the discretion of the County Attorney. In *State v. Greenlee*, this Court upheld a prosecutor's discretionary policy to not allow diversion to any defendant charged with drug offenses even though the prosecutor did not have a written policy in compliance with K.S.A. 22-2907. 228 Kan. 712, 721, 620 P.2d 1132 (1980). The Court noted that the "overall effect" of K.S.A. 22-2907 was "merely to make the process of diversion more formal by setting a few *procedural* standards and establishing some degree of uniformity in *procedure*." *Id.* at 718 (emphasis added). This Court in *Greenlee* further noted:

There is no statutory right of any defendant to be granted diversion and certainly there was no such right at common law. The statutes **merely establish a procedure** to be followed by the county or district attorney and certain factors which are to be considered if diversion is to be considered. The prosecutor, after following the procedures and considering all the factors "may propose a diversion agreement to the defendant." The prosecutor is not required to propose diversion to any defendant.

Id. at 719-720.

Unlike the prosecutor in *Greenlee*, the Montgomery County Attorney's office does have a written diversion policy, which was attached to the Petitioners' Petition for Writ as Exhibit B. However, Petitioners, or more specifically the ACLU, simply do not agree with the *sufficiency* of the diversion program in Montgomery County. Nothing in K.S.A. 22-2907 et seq., states specifically what must be included in the written policies and guidelines beyond what is listed in K.S.A. 22-2907(2), which is addressed below. *See also State v. Kacsir*, 45 Kan.App.2d 409, 251 P.3d 362 (2011) (holding "the decision to divert in Kansas

resides with the county or district attorney” and that the statute provides the *authority* to district attorneys to develop and enforce more specific rules).

Therefore, Petitioners’ Petition for Writ of Mandamus should be denied as it is merely attempting to compel a discretionary action which is prohibited.

D. PETITIONERS’ INTERPRETATION OF THE RELEVANT STATUTES IS NOT CONSISTENT WITH CASE LAW OR THE LEGISLATIVE HISTORY

Respondent strongly disagrees with Petitioners interpretation of K.S.A. 22-2907.

This Court has previously stated the standard for statutory interpretation as follows:

When called upon to interpret a statute, we first heed a statute’s express language, giving ordinary words their ordinary meaning.

If a plain reading of the text of a statute yields an ambiguity or a lack of clarity, statutory construction becomes appropriate. In such circumstances, a court must move outside the text of the provision at issue and examine other evidence of legislative intent, such as legislative history, or employ additional canons of statutory construction to determine the legislature’s meaning.

Should a statute’s meaning not be evident from its plain language, we move from interpretation to construction, employing study of legislative history, application of canons of statutory construction, and appraisal of other background constructions. Further when examining statutes to determine legislative intent, we must consider various provisions of an act in *pari materia* with a view toward reconciling and bringing them into harmony if possible. In addition, we have often noted that a specific statute controls over a general statute.

State v. Raschke, 289 Kan. 911, 914, 219 P.3d 481 (2009) (internal citation and quotation omitted).

Petitioners’ interpretation of K.S.A. 22-2907 is erroneous and should not be adopted by this court. First, Petitioners have requested this Court to issue “an order compelling Respondent to create diversion policies and guidelines that fully and accurately describe the

entire diversion program, including what charges are eligible and what factors are disqualifying.” However, as admitted by Petitioners, and is in fact attached to the Petition as Exhibit B, Montgomery County Attorney’s office does in fact have a written diversion program which lists in detail in Paragraph 3, subparts (a) – (e), who is and who is not eligible for diversion. In addition, K.S.A. 22-2908 provides further guidance and restrictions on who can and cannot be offered diversion.

Further, as argued in detail above, the final determination of who is eligible for diversion is at the *discretion* of the County Attorney. Therefore, Petitioners’ first request for relief must be denied.

Second, Petitioners have requested this Court to issue “an order compelling Respondent to provide written notice of diversion to all defendants in accordance with Respondent’s clearly defined legal duty under K.S.A. §22-2907(3).” Petitioners’ interpretation of K.S.A. 22-2907(3) is clearly erroneous and nonsensical. Petitioners appear to be arguing that *all defendants* **regardless** of whether they are eligible for diversion, should be provided a copy of the diversion program.

This proposition is clearly not what the legislature intended and is simply not feasible. *See* Exhibit A, ¶ 6, including all subparts; Exhibit C.

Using last year as an example, in 2017, Montgomery County filed 350 felony cases, 111 misdemeanors, and 3,618 traffic cases. *See* Exhibit A, ¶ 6a. If you assume that the Montgomery County Attorney’s offices spends one hour preparing the “notices” the ACLU proposes are required, that would equal 4,079 additional hours of staff time, or 102 weeks of work. *See* Exhibit A, ¶ 6b. Montgomery County would have to hire at least two full-

time staff people just to prepare and mail these notices. *See* Exhibit A, ¶ 6b. At \$15.00/hour that would be \$61,185.00 for just salaries, not to mention benefits package for KPERS, health insurance, worker’s comp, etc. *See* Exhibit A, ¶ 6b.

Mailing the “notices” would cost approximately \$2.00 per notice at an additional cost of \$8,158.00 for supplies such as paper, copying, postage, etc. *See* Exhibit A, ¶ 6c.

Such additional costs would have to be funded somehow, and the legislature has suggested no such provision in the statute.

Further, the word “shall” in a statute is only sometimes mandatory and is often only directory. In *Rashchke*, this Court noted “prior decisions of this court have interpreted the legislature’s use of the word ‘shall’ in some contexts as mandatory and in other contexts as merely directory. Its meaning is not plain, and construction is required.” 289 Kan. at 914–15. The following factors are considered in determining whether the legislature’s use of “shall” makes a particular provision mandatory or directory:

(1) legislative context and history; (2) substantive effect on a party’s rights versus merely form or procedural effect; (3) the existence or nonexistence of consequences for noncompliance; and (4) the subject matter of the statutory provision, *e.g.*, elections or notice on charges for driving under the influence.

Id. at 921.

Matters that are “simply a mode of procedure intended to secure order, system, and dispatch of the public business” are more likely directory than mandatory. *Id.* at 922. This Court has previously found that K.S.A. 22-2907 et seq., is primarily a procedural statute. *See Greenlee*, 228 Kan. at 718-719 (“the overall effect is merely to make the process of diversion more formal by setting a few *procedural* standards and establishing some degree

of uniformity in *procedure*.” (emphasis added)).

Further, nowhere in K.S.A. 22-2907 et seq., is there any consequences for failing to provide notice of the diversion policy. *See Ambrosier*, 304 Kan. at 914 (citing *Raschke*, 289 Kan. at 917–18, 219 P.3d 481 (citing and discussing, inter alia, *Hooper v. McNaughton*, 113 Kan. 405, 407, 214 P. 613 (1923) (distinction between directory, mandatory lies in consequence of nonobservance; act done in disobedience of mandatory provision void; directory provision should be obeyed, but act done in disobedience may still be valid))). *See also State v. Fink*, 217 Kan. 671, 676, 538 P.2d 1390 (1975) (this Court held that K.S.A. 22-2902 regarding preliminary hearings being required within 10 days was directory as opposed to mandatory in part because the legislature did not provide for dismissal if not complied with and whether the purpose of the statute, i.e., right to a speedy trial, was being complied with based on the totality of the circumstances).

Legislative context and history can be crucial to the distinction between a mandatory “shall” and a directory “shall.” As it relates to legislative history, the legislature did not intend to require County Attorneys to offer *all* defendants diversion. *See* Kansas House Judiciary Committee Report on H.B. 3130 at 48 (“The Committee recommends that H.B. 3130 be enacted to establish a pretrial diversion **procedure** to be used by county and district attorneys.” (emphasis added)). In fact, this Court has previously recognized that in passing K.S.A. 22-2907 et seq. “the objective sought by the legislature would appear to be to encourage a uniform **procedure** to provide an alternative to formal conviction of first-time offenders,” not to instill a mandatory diversion program. *Greenlee*, 228 Kan. at 718 (emphasis added).

This Court has specifically stated that, “The prosecutor, after following the procedures and considering all the factors may propose a diversion agreement to the defendant. The prosecutor is not required to propose diversion to any defendant.” *Id.* at 717 (emphasis added). This Court went on to state that “[t]here is no statutory right of any defendant to be granted diversion and there was certainly no right at common law.” *Id.* at 718 (finding that the appellant’s constitutional rights of due process were not violated when the Prosecutor did not give the defendant the opportunity for diversion).

Petitioners quoted the Judicial House Committee Report on H.B., but failed to mention the entire quote from the House Committee. Petitioners noted that the “Committee has examined the pretrial diversion approach and believes that such a program should be available in Kansas to reduce the number of persons committed to institutions,” but failed to cite the rest, which states, “in those cases where diversion would be in the interests of justice and of benefit to the defendant and the community.” Judicial House Committee Report on H.B. 3130 at 48-49 (emphasis added). The Committee’s use of “*in those cases*” clearly shows that the Committee did not intend to grant each defendant charged with a crime a right to diversion through this statute. If “all defendants” do not have to be offered diversion, what would be the purpose of providing them all with copies of the diversion program other than to waste County resources?

Petitioners also failed to include the rest of the House Committee’s opinion, which states in part: “The Committee believes that a pretrial diversion mechanism should be available in Kansas to be used, in some cases, as an alternative to the traditional dispositions of incarceration or probation.” *Id.* (emphasis added).

The legislature clearly intended KSA 22-2907 et seq., to just provide a *procedure* or *mechanism* by which County Attorneys *may* provide for diversion. As such, the use of the word “shall” in K.S.A. 22-2907(3) should be interpreted as directory as opposed to mandatory.

Turning to legislative context, to the extent the legislature intended for diversion to be offered to *all* defendants, the legislature has previously drafted a provision that provides for such in K.S.A. 38-2346 in juvenile cases. If the legislature truly wanted diversion to be made available to all offenders, such K.S.A. 22-2907 et seq., could have been amended accordingly.

Further, it is more appropriate, and consistent with the law’s intent, to read K.S.A. 22-2907(3) in conjunction with the rest of the statute.

In order to ascertain the legislative intent, courts are not permitted to consider only a certain isolated part or parts of an act, but are required to consider and construe together all parts thereof *in pari materia*. When the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the strict letter of the law.

Aves By & Through Aves v. Shah, 258 Kan. 506, 513, 906 P.2d 642, 648 (1995).

It is only after a County Attorney has deemed diversion appropriate, may he propose a diversion agreement to the defendant (K.S.A. 22-2907(1)) and then, because diversion has been deemed appropriate, each defendant shall be informed in writing of that diversionary program and policies (K.S.A. 22-2907(3)). It would not make sense to read the statute in a backwards manner that would give every defendant charged with a crime, whether it be a moving violation or murder, a writing of the diversionary program and

policies even though the County Attorney's own guidelines might automatically deny them the ability of receiving diversion.

Therefore, Petitioners' arguments stating that a County must provide the diversion program's guidelines and policies to each defendant charged, even those defendants who will never qualify for a diversionary program, is erroneous. Such a task would be enormously taxing on county money, manpower, and resources and wholly inconsistent with the wording of the statute.

Finally, Petitioners have requested this Court to issue "an order compelling Respondent to provide diversion conference to all eligible defendants in accordance with Respondent's clearly defined legal duty under K.S.A. §22-2907 (2) and (3)."

As it relates to diversion conferences in the Montgomery County Attorney's office, each attorney in the Montgomery County attorney's office has authority to offer diversions, according to the written policy. *See* Exhibit A, ¶ 7. At times the defendants and/or defense attorneys will contact the County Attorney's office to request a diversion or the Court recommends to defendants that they seek a diversion from the County Attorney's office. *See* Exhibit A, ¶ 7. Once the Montgomery County Attorney's office determines that a defendant is eligible, then the attorney will contact the defense attorney to discuss the same. *See* Exhibit A, ¶ 7.

In Respondent's past 18 years of practicing in the Montgomery County Attorney's office, a defense attorney has never requested a diversion conference. *See* Exhibit A, ¶ 8. In fact, defense attorneys have refused to let Respondent or his staff meet with their clients to discuss the case, the possibility of diversion, and/or the terms of a diversion *See* Exhibit

A, ¶ 8. As the defendants are represented by counsel, Respondent would not be permitted to contact them without their attorney's approval and/or presence. *See* Exhibit A, ¶ 8a.

In addition, as a practical matter, any information that would typically be discussed or exchanged during such a conference is exchanged between counsel via email and it would be the defense counsel's responsibility to share such information with their individual clients. *See* Exhibit A, ¶ 9. Therefore, Petitioners' claims related to no conferences being conducted is unfounded, they are just not "conferences" in the traditional sense.

Next, as discussed above in relationship to the notices requested by the ACLU, the cost associated in doing such "conferences" in person would be nearly impossible for Montgomery County to fund. If you assume that the Montgomery County Attorney's office spends one hour of staff attorney time for each case preparing for and having the "diversion conferences" that the ACLU wants it would have to hire 2 full-time attorneys. *See* Exhibit A, ¶ 6d. Assistant County Attorneys earn salaries between \$65,000 to \$80,000, which would mean additional salaries of \$130,000 to \$160,000 plus the benefits package. *See* Exhibit A, ¶ 6d.

Montgomery County also pays for public defenders for 99% of all Misdemeanor cases, which means Montgomery County would have to pay for 111 hours of attorney time at \$75.00/hour for the public defenders to attend the conferences. *See* Exhibit A, ¶ 6e. For traffic cases, the County would have to pay for 3,618 hours of attorney time at \$75.00/hour for the conferences. *See* Exhibit A, ¶ 6f.

Finally, as detailed above, the word "shall" in a statute is only sometimes mandatory

and is often only directory. Similar to the analysis above, the provision of diversion conferences is merely a procedural mechanism and is directory not mandatory. There is nothing in the legislative history or context of K.S.A. 22-2907 et seq., to suggest that the conferences were a necessary requirements as opposed to merely a procedural mechanism to inform a defendant of the terms of the diversion agreement. As a practical matter, this should be done by the defendants *own attorney* and not by the County attorney. Further, there is nothing in K.S.A. 22-2907 et seq., which provides a consequence for failure to conduct a conference.

Therefore, as argued above, the Petitioners have misinterpreted K.S.A. 22-2907 et seq., and their Petition for Writ of Mandamus should be denied.

IV. CONCLUSION

WHEREFORE, based on the above and forgoing, Respondent requests the Court to deny Petitioners' Petition for Writ of Mandamus.

Respectfully submitted,

/s/ Tracy M. Hayes

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY certify that on this 27th day of September, 2018, the foregoing was filed with the Clerk of the Court using the Kansas Courts eFiling system which will send notice of electronic filing to all counsel of record.

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ATTORNEYS FOR PETITIONERS

/s/ Tracy M. Hayes
Attorney

IN THE SUPREME COURT OF THE STATE OF KANSAS

KANSAS CROSSROADS FOUNDATION)	
And KARENA WILSON,)	
)	
Petitioners,)	
)	Case No. 119493
vs.)	
)	
LARRY MARKLE, in his official capacity)	
as County Attorney of Montgomery County,)	
)	
Respondent.)	

AFFIDAVIT OF LARRY MARKLE

I, Larry Markle, Montgomery County Attorney, and Respondent in this action, being duly sworn according to law upon my oath, do hereby depose and state as follows:

1. I was appointed as Montgomery County Attorney on May 8, 2006, and have acted as the duly elected County Attorney since that time.
2. I have personal knowledge of the matters in this affidavit and would testify to these facts.
3. Upon information and belief, the following information is relevant regarding the Kansas Crossroads Foundation (hereinafter "KCF"):
 - a. KCF's operates similar to an employment agency not as a religious non-profit organization.
 - b. KCF routinely arranges for people to work for private employers. Based on interviews with individuals who had involvement with KCF, KCF maintains a working relationship with Cobalt Boats, LLC, located in Neodesha, Kansas. See Exhibit 1, bullet point 7.

EXHIBIT A

- c. A number of individuals who have been supervised by probation officers in Montgomery County have paid money to KCF and/or had money paid to KCF on their behalf.
 - d. KCF requires such individuals to sign a written contract. *See Exhibit 2.*
4. KCF alleges that they provide drug and alcohol counseling; however, a check of the records with the Kansas Department of Health and Environment reveals that no licensed counselors have any connections with KCF.
5. **Diversion Policy.** That at all times material hereto, the Montgomery County Attorney's office under my direction has maintained a diversion policy consistent with Kansas Statutes to wit:
- a. The written diversion policy is open to the public and to all attorneys.
 - b. The written diversion policy has been accessed by the public and the attorneys on a regular basis.
 - c. That I have expended significant amounts of time in developing a diversion program for first time Domestic Violence offenders. This program began in 2007 with Four County Mental Health Services and is now administered by BIP Services in Cherryvale, KS.
 - d. That diversions are routinely granted and entered into for first time DUI, first time domestic violence, and other minor offenses.
 - e. That diversions are not routinely granted for felonies. If a diversion is granted for a felony it is because of extenuating circumstances, at my discretion.

6. **Diversion Notices/Conferences.** The type of diversion notices and conferences demanded by the ACLU is not required by Kansas Statutes. In addition, it would be cost prohibitive for a small county like Montgomery County.

a. Statistics for 2017 from the Kansas Judicial Branch for Montgomery County show that the following cases were filed:

- i. Felonies—350;
- ii. Misdemeanors—111; and
- iii. Traffic—3,618.

b. If you assume that we spend 1 hour preparing the "notices" that the ACLU wants that would be 4,079 hours of staff time. That equals 102 weeks of work. That means Montgomery County would have to hire 2 full-time staff people just to prep and mail these notices. At \$15.00/hour that would be \$61,185.00 for just salaries. Then you would also have to add the benefits package for KPERS, health insurance, worker's comp, etc.

c. Mailing the "notices" would cost @ \$2.00/notice. @ \$8,158.00 for supplies such as paper, copying, postage, etc.

d. If you assume that we spend 1 hour of staff attorney time for each case prepare for and having the "diversion conferences" that the ACLU wants we would have to hire 2 full-time attorneys. My assistants earn salaries between 65,000 to 80,000. That would mean additional salaries of \$130,000 to \$160,000 plus the benefits package.

- e. Montgomery County also pays for public defenders for 99% of all Misdemeanor cases. That means Montgomery County would have to pay for 111 hours of attorney time @ \$75.00/hour.
- f. Montgomery County also pays for public defenders for traffic cases. Now that they have to have a "diversion conference" the County would have to pay for 3,618 hours of attorney time at \$75.00/hour.
- g. The State of Kansas pays for public defenders for 99% of all felony cases. That means the State of Kansas would have to pay for 350 hours of attorney time at the State rate. The current rate is now \$75.00/hour.
- h. Montgomery County would also have to hire at least two people to monitor the diversions to see if the defendants are compliant. If that is a staff person, then use the same numbers as number 2 above. Montgomery staffers are not trained as probation officers, law enforcement officers or otherwise.

7. **Diversion Application Procedure:** Each attorney in the Montgomery County attorney's office has authority to offer diversions, according to the written policy. At times the defendants and/or defense attorneys will contact the County Attorney's office to request a diversion. At times the Court also recommends to defendants— that they seek a diversion from the County Attorney's office. Once the Montgomery County Attorney's office determines that a defendant is eligible, then the attorney will contact the defense attorney to discuss the same.

8. In the past 18 years of practicing in this office, a defense attorney has never requested a diversion conference. In fact, defense attorneys have refused to let myself or any of the assistants meet with their clients to discuss the case, the possibility of diversion, and/or the terms of a diversion.

- a. As the defendants are represented by counsel, I am not permitted to contact them without their attorney's approval and/or presence.

9. Further, any information that would typically be discussed or exchanged during such a conference is exchanged between counsel via e-mail and it would be the defense counsel's responsibility to share such information with their individual clients.

10. Any individual that would be eligible for a diversion programs would also:

- a. Be eligible for probation instead of incarceration.

11. There is no change in the number of individuals that are incarcerated as opposed to available for employment if offered the diversion program; incarceration only results based on a probation violation.

- a. Any violation of probation would also likely lead to someone being removed from the diversion program.

12. Similar to the requirements of probation, K.S.A. 22-2909(c) requires an individual that accepts a diversion agreement to pay fines and to participate in an alcohol and drug evaluation by a licensed provider.

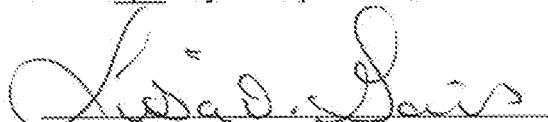
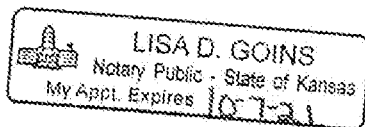
- a. Similar to the requirements of probation, K.S.A. 22-2909(c), KCF's alleged "injuries" of having to transport and spend resources on those who are on probation would still be in place if more individuals were granted diversion.

FURTHER AFFIANT SAYETH NAUGHT.



LARRY MARKLE-SC#12345
Montgomery County Attorney
300 E. Main
Independence, KS 67301
(620) 330-1020
lmarklelawyer@gmail.com

Subscribed and sworn to before me this 26th day of September, 2018.


Notary Public

Kansas Crossroads Foundation
Working to strengthen Southeast Kansas
1103 Illinois
Neodesha, KS 66757
620-325-4061

Jack Kyle: 620-313-0420

Jennifer Davis: 620-205-6602

To work for our non-profit organization for two months at a supporting host company – here is the following things you must agree to:

- Build a work record for submission to the host company (we can help you with this through volunteer work).
- Attending support group twice a week mandatory on Wednesday at 7PM at Christ Church 1001 Elm Neodesha (other local options are Celebrate Recovery Sunday 9:15 AM or Montgomery County locations call Sue Caldwell 620-779-3267 other option are in Fredonia and Cherryvale)
- Attending weekly goal setting and stress management with the director once a week.
- Attend one approved outside healthy social group each week (local option Bible Study outside Thayer every Friday at 6:30 PM van leaves Christ Church at 6 PM or call Hasstedt's for a ride 620-325-3865 or 620-920-0440, AA, NA, Alanon, other bible studies, sorority, book clubs, etc as long as they are pre-approved).
- Submit and pass random urinalysis and breathalyzer tests.
- Must follow all work requirements given by the host company for employment.
- If you are unable to make it to work you must call into Cobalt 620-325-3662 to report before work begins and call or text Jack or Jennifer. *JMS, SLL*
- If you have a prior commitment (court, doctor, etc) let your supervisor and us know ahead of time so that plans can be made.
- If you need any medical treatment for illnesses (mental or physical) we will do what we can to help, we have local options for people in need and can help you get the medications or other treatments you need. We are here to help you, and we can only help you if you are open and honest.
- If you have any problems at work with the job or any of the employees please let us know, again we are here to help if we don't know anything we can't help.
- Your time with us is 60 days at that point Cobalt has the option to extend this contract or hire you.
- If you are unable to attend a meeting please let us know, these are mandatory meetings and are part of all of our recovery process.
- Skipping meetings is just like missing work, it will count against your record with the program, if you are missing meetings you can be dismissed from the program (lose your job).

I _____ understand and agree to the fact that there are no guarantees that we will be able to place you into a job, but we will do our best to get you a job.

Sign

Date

EXHIBIT 1



Kansas Crossroads Foundation
Working to strengthen Southeast Kansas
1103 Illinois
Neodesha, KS 66757
620-325-4061
Jack Kyle: 620-313-0420
Jennifer Davis: 620-205-6602
Sue Caldwell 620-779-3267

To work for our non-profit organization for two months at a supporting host company – here are the following things you must agree to:

- You are building a work record for submission to the host company so attendance, quality, and hard work are important as well as following all the rules given by host company which may include mandatory overtime as needed.
- Attend a support group twice a week: mandatory Celebrate Recovery meetings on Wednesday at 7PM KCF/NLC and Sunday 9:15 AM at Christ Church 1001 Elm (for Montgomery County locations contact Sue Caldwell).
- Attend weekly goal setting and stress management with a director once a week.
- Attend one approved outside healthy social group each week .
- Submit and pass random drug & alcohol tests.
- If you are unable to make it to work you **must** call into Cobalt at **620-325-3662** to report before work begins **and** call or text Jack, Jennifer, &/or Sue. If you have a prior commitment (doctor, court, etc) let your supervisor and us know ahead of time. They generally fire people for missing 2 days - don't miss.
- If you need any medical treatment for illnesses (mental or physical) we will do what we can to help, there are local options for people in need and we can try to help you get the medications or other treatments you need. We are here to help you, and we can only help you if you are open and honest.
- If you have any problems at work with the job, coworkers, boss, etc. please let us know so we can handle it for you, do not attempt to fix it yourself.
- Your time with us is 60 days at that point Cobalt has the option to extend this contract or hire you on full time.
- If you are unable to attend a meeting you must let us know, these are mandatory meetings and are part of all of our recovery process. Skipping meetings is just like missing work, it will count against your record with the program, if you are missing meetings you can be dismissed from the program (lose your job).

I **REDACTED** understand and agree to the fact that there are no guarantees that we will be able to place you into a job, but we will do our best to get you a job.

REDACTED

Sign

REDACTED

ate

REDACTED

EXHIBIT 2

KANSAS CROSSROADS FOUNDATION)
And KARENA WILSON,)

Case No. 119493

**LARRY MARKLE, in his official capacity)
as County Attorney of Montgomery County,)**

AFFIDAVIT OF LISA MONTGOMERY

1. I have been an Assistant Montgomery County Attorney since January 2017.

3. I have been personally involved in the prosecution of multiple cases

a. Karena Wilson was involved in some capacity in cases 16 CR 107 I and 16 CR 110 I (IPD#15-2644 and IPD# 15-2636);

b. In case 17 CR 179 I Wilson was a suspect in Possession with Intent to Distribute Methamphetamine, a copy of the Probable Cause Affidavit is attached hereto as Exhibit 1;

EXHIBIT B

- i. Wilson was not charged in regard to this case because she agreed to testify against the co-defendant, Austin Harris. Wilson later revoked her agreement to testify against Harris while being prosecuted in 17 CR 269 I;
- ii. In addition, she came to the Montgomery County Attorney's office and, without her attorney present, made statements that the methamphetamine was hers and not Harris'. Such information was promptly reported to her attorney.

4. In case 17 CR 269 I, the case referenced in the Petition for Writ, Wilson was a suspect in a series of thefts, a copy of the Probable Cause Affidavit is attached hereto as Exhibit 2.

- a. Wilson was originally charged with Felony Theft in violation of K.S.A. 21-5801(a)(1), two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct.
 - i. The evidence in this case was that Wilson:
 - 1. served as a lookout for Austin Harris and/or Bradley Davis;
 - 2. attempted to gain access to other businesses and coin machines for the purpose of continuing this course of thefts;
 - 3. at least three business with coin machines were broken into and stolen from in the course of one evening; and

4. the businesses not only lost the profits from the vending machines, but the vending machines themselves were damaged.

5. Wilson first appeared on June 19, 2017, without counsel but was appointed counsel from the Public Defender Office, Bryan Rickman, prior to her next appearance on June 27, 2019.

a. Bryan Rickman has been a public defender in Montgomery County for at least seven years and is familiar with the diversion policies of the Montgomery County Attorney.

b. I have personally worked in the Montgomery County Public Defender's office with Rickman and have heard Rickman state to clients that he knows the Montgomery County Attorney's diversion policy and that they do not qualify for diversions and that he won't ask for one.

6. Wilson had a preliminary hearing on September 19, 2017.

a. Testimony during the preliminary hearing raised additional charges of criminal damage to property for the three vending machines that were damaged.

7. I intended to add three misdemeanor charges of criminal damage to property for less than \$1,000.00 for each vending machine damaged that night to each co-defendant's case.

8. I received the attached email from Rickman dated November 6, 2017, with a plea offer and a proffer of Wilson's testimony. *See Exhibit 3.* There is no mention in


the offer of a request for a diversion on client's behalf and at no time previously did Rickman request a diversion in writing or verbally of me. I agreed to this plea offer in exchange for testimony against Harris and Bradley Davis. On December 6, 2016, Wilson appeared at our office and made statements in regards to Harris' other case.

9. On December 12, 2017, Wilson pled no-contest to three counts of misdemeanor theft, one count for each vending machine that was broken into on June 14, 2017, and was sentenced on that date. Even though Wilson was no longer willing to testify against Harris, I took into consideration her testimony against Davis and did not withdraw the plea offer.

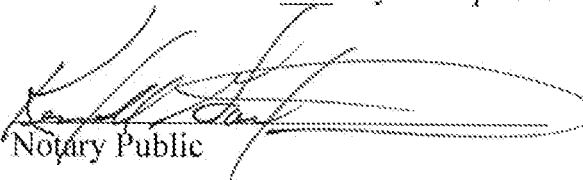
10. Even if Mr. Rickman had requested a diversion, I would not have offered Wilson a diversion agreement for the following reasons under the Montgomery County Attorney's Diversion Policy:

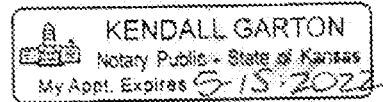
- a. She was charged with a felony.
- b. The Kansas Bureau of Investigation Criminal Records Section Report showed a previous arrest by Independence Police Department for two misdemeanor counts involving drugs and drug paraphernalia in 2014.
- c. She made un-solicited statements in this office about committing a felony by possessing Methamphetamine in the case against Harris.

FURTHER AFFIANT SAYETH NAUGHT.

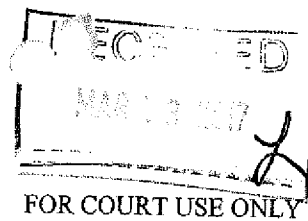

Lisa Montgomery SC#18243
Assistant Montgomery County Attorney

Subscribed and sworn to before me this 27th day of September, 2018.


Notary Public



DISTRICT COURT OF MONTGOMERY COUNTY,
KS



ARREST/DETENTION PROBABLE CAUSE AFFIDAVIT

OCA No 17-417

MG
County in Kansas

I, Dustin Taylor, of the Independence Police Department being first duly
Sworn on oath, says:

The following offense(s) has been committed:

21-5705(a1)(d1)(B) Distribute opiate, opium, narcotic, certain stimulant; 3.5 - <100 grams: STAT
21-5709(b)(2)(e3) Use/possess w/intent to use drug paraphernalia into human body: STAT

The following person or persons are alleged to have committed said offense(s):

Adult - Name Harris, Austin James

Race- White

Sex- Male

DOB- REDACTED

SSN- REDACTED

Address-

REDACTED

This affidavit is based on the following facts:

On Tuesday, March 21, 2017 at approximately 5:00 AM, Officers were dispatched to 801 E. Birch St. Independence, Montgomery County, KS 67301 in regards to a possible overdose involving an 18 year old white female who may have ingested sleeping pills.

Upon arrival, Sergeant TAYLOR observed a white male assisting a white female out of the residence and onto the porch. Sergeant TAYLOR recognized both individuals from prior dealings, as AUSTIN HARRIS and KARINA WILSON. K. WILSON was pale in color and coming in and out of consciousness. While speaking with A. HARRIS, Sergeant TAYLOR learned that A. HARRIS located a note that K. WILSON had written prior to ingesting the unknown substance. Sergeant TAYLOR requested to see the note which K. WILSON had written and began to follow A. HARRIS to the front door of the residence.

A. HARRIS opened the front door walked through the living room. As Sergeant TAYLOR approached the door to step inside the residence, a white, transparent container, which was wrapped in black electrical tape, with a round stem emitting from the container could be seen in plain view. The device was resting on a coffee table in the living room, approximately 5 to 7 feet from the front door and appeared to have burn marks. Also the white plastic body of the device appeared to have been slightly melted. Based on Sergeant TAYLOR's training and experience, Sergeant TAYLOR believed the device to be a homemade smoking pipe, which is used to assist in ingesting methamphetamine into the human body by means of smoking.

Once A. Harris returned with the letter from K. WILSON, Sergeant TAYLOR and A. HARRIS

returned to the porch. A. HARRIS was advised of his rights per Miranda and agreed to speak without an attorney. Sergeant TAYLOR advised A. HARRIS that he saw the "meth pipe" on the table and A. HARRIS became very nervous and began shaking. I was able to visually observe the color fade from A. Harris's face as he began to turn white. A. HARRIS advised that he did not know who the pipe belonged to. Sergeant TAYLOR asked A. HARRIS if there were any other illegal items inside the residence and A. HARRIS advised that he did not know. A. HARRIS advised that the smoking pipe may belong to his girlfriend K. WILSON, or her friend "June" who I know to be CRYSTAL SMITH from prior dealings. A. HARRIS advised that he allowed C. SMITH to come into his residence and take a shower and have a place to stay. A HARRIS advised that after C. SMITH got out of the shower he went into the bathroom and located a "meth pipe" and A. HARRIS told C. SMITH to leave and get her belongings. A. HARRIS advised that he sent his girlfriend K. WILSON to take C. SMITH somewhere and get her off of his property. A. HARRIS advised that K. WILSON and C. SMITH left in his truck and he did not know where they went. A. HARRIS advised that when K. WILSON left, C. SMITH took several bags and laundry baskets with her. A. HARRIS advised that he and K. WILSON were arguing and he left the residence in his vehicle. A. HARRIS advised that he drove around for approximately two hours and ran out of fuel, so he had to walk home. A. HARRIS advised that upon arrival, K. WILSON and C. SMITH were back at the residence and C. SMITH was putting bags back inside the home. A. HARRIS stated that he asked her what she was doing and she stated that she was getting more things of hers. A. HARRIS advised that he did not understand and asked C. SMITH where her K. WILSON was. C. SMITH told A. Harris that K. WILSON was inside the residence. A. HARRIS stated that he went inside and observed that K. WILSON was acting oddly and he could tell that she was under the influence of something. A. Harris advised that K. WILSON stated that she had consumed "sleeping pills" but could not tell A. HARRIS what kind, how many, or who provided them. A. HARRIS advised that K. WILSON slowly began losing functionality and speech, and also losing her skin color, so A. HARRIS contacted emergency services. A. HARRIS advised that he was only back at the residence for approximately 30 minutes prior to our arrival.

A. Harris was detained and placed into handcuffs. Officers D. BOWERS and D. TAYLOR conducted a clearance of the residence to make sure no other persons were inside the residence for officer safety, or to destroy any evidence. After a quick clearance of the residence Officers D. BOWERS and T. LUPARDUS remained at the scene and secured the residence. Sergeant TAYLOR applied for, then was granted a search warrant of the residence at 6:34 AM by Montgomery County District Court Judge Jeffery Gettler. The search warrant was executed at approximately 6:50 AM and the following items were located:

- white transparent homemade smoking pipe with residue black electrical tape
- clear tube with glass light bulb and white crystalline residue
- Homemade smoking pipe with clear container which contained red liquid and metal piping
- clear glass mason jar containing large quantity of white crystal substance

(this is not a complete list of items)

Sergeant Jason REDDY conducted methamphetamines field test kit on the white crystal substance located in the mason jar and received a positive result. The mason jar was located in a bedroom which belonged to A. HARRIS and K. WILSON, based on clothing articles photographs and personal items visual inside the room. Based on Sergeant TAYLOR'S training and experience Sergeant TAYLOR believed the homemade smoking pipes to be used to assist in ingesting methamphetamines into the human body by means of smoking. The white crystal substance was weighed using a digital scale and showed an approximate weight of 3.5 ounces or (99.05 grams). Based on Sergeant TAYLOR'S training and experience, it is common for individuals who distribute illegal narcotics to be in possession of large amounts of illegal narcotics, which can be accessed and divided up into smaller quantities for individual buyers.

On Tuesday, March 21st, 2017 at approximately 8:23 PM, Sergeant TAYLOR conducted a traffic stop on a vehicle in the area of N. 13th St. and Pine St. Independence, Montgomery County, KS 67301. During the traffic stop, a female passenger in the vehicle was recognized by Sergeant TAYLOR as CRYSTAL SMITH. Sergeant TAYLOR checked C. SMITH for wants or warrants and was advised by dispatch that C. SMITH had an active warrant for her arrest, warrant number 16-0364, through the City of Independence, KS. Crystal was placed under arrest for the warrant and brought to the Independence Police Department for questioning. Sergeant TAYLOR advised C. SMITH of her rights per Miranda and she agreed to speak with him. C. SMITH advised that she was at A. HARRIS'S residence the night before as A. HARRIS had originally told Sergeant TAYLOR. C. SMITH stated that she uses syringes to ingest methamphetamine into her body and had done so at A. HARRIS'S the previous night, while A. HARRIS and K. WILSON were both present. C. SMITH stated that A. HARRIS and K. WILSON were smoking the methamphetamine using the white transparent homemade smoking pipe which was located on the coffee table during the search warrant at 801 E. Birch St., and also seen in plain view by Sergeant TAYLOR upon his arrival to the original call for service. C. SMITH stated that she left the residence with K. WILSON and went to JOHNNY BEST'S residence (it should be noted that while on patrol Sergeant TAYLOR did observe C. SMITH and K. WILSON at J. BEST'S residence, using A. HARRIS'S vehicle for transportation which validated C. SMITH'S timeline.) C. SMITH stated that she returned to A. HARRIS'S residence to gather the rest of her belongings and A. HARRIS made her leave. C. SMITH stated that she had never seen the clear glass mason jar of crystalline substance. C. SMITH stated asked "If I had that much dope, why the fuck would I go over to Austin's house and get bunk ass dope from him?!" C. SMITH stated that she had purchased methamphetamine from A. HARRIS one gram at a time. C. SMITH stated that A. HARRIS is always talking about manufacturing methamphetamines the times she has been around him. C. SMITH stated that she had no reason to lie, because she just found out that she is pregnant today and decided to stop using methamphetamine. C. SMITH stated that the last time she used methamphetamine was the previous night, while at A. HARRIS and K. WILSON'S residence.

Based on the above facts, A. HARRIS is currently at the Montgomery County Department of Corrections where he is waiting to see a judge on the above charges.

This affidavit is not intended to be a comprehensive report on the investigation of the allegations, but is limited to showing Probable Cause that one or more violations of the Kansas Criminal Code occurred, Probable Cause that the defendants above

named committed the acts that were in such violation, that the same occurred in Montgomery County, Kansas within the time prescribed by the applicable Statute of Limitations.

[Signature]
Affiant

ARREST/DETENTION PROBABLE CAUSE DETERMINATION

The court determines from the above affidavit under oath that there is probable cause to believe that the offense(s) of:

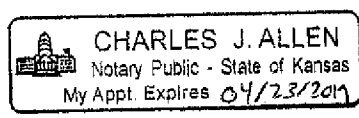
Has been committed by the persons named in the above affidavit and probable cause for the arrest and detention of said person(s)

Signed on _____ at _____ m

Judge

Subscribed and sworn to before me on 03 / 22 / 2017
at 02:35, Am.

Charles J Allen
Notary



1. Set forth various charges possible under the facts as presently known.
2. Name of person or persons who are alleged to have committed the offense(s).
3. State facts and circumstances specifically, in detail, and when and how the information was acquired – by observation, informant, etc., and if by informant or other hearsay, describe how reliability verified – (previous proved reliability, corroboration by other physical observation, etc). Additional facts brought out orally before the judge should inserted before signature.

COURT ORIGINAL DETENTION FACILITY PROSECUTING ATTORNEY AFFIANT OR LAW ENFORCEMENT AGENCY OR EXTRA

DISTRICT COURT OF MONTGOMERY COUNTY,
KS

FOR COURT USE ONLY

ARREST/DETENTION PROBABLE CAUSE AFFIDAVIT

OCA No 17-887

MG
County in Kansas

I, Dustin Taylor, of the Independence Police Department being first duly
Sworn on oath, says:

The following offense(s) has been committed:

**21-5801(a)(1)(b5) Conspiracy to commit Theft of property/services; \$1500 or less from 3 businesses in 72 hrs:
STAT**

The following person or persons are alleged to have committed said offense(s):

Adult - Name Wilson, Karena Violet

Race- White

Sex- Female

DOB- [REDACTED] SSN- [REDACTED]

Address-

[REDACTED]

This affidavit is based on the following facts:

On June 14th, 2017 at approximately 4:48 PM, Sergeant CHRISTINA JOHNSON was dispatched to 407 W. Railroad St. Independence, Montgomery County, KS 67301, for a theft report. Sergeant C. JOHNSON arrived and spoke to JEREMY HALLETT, who is the owner of the establishment. J. HALLETT advised that someone had illegally entered the vending machines in front of his store. J. HALLETT advised that whomever entered the vending machines had taken the bill collection unit and the coin collection unit from inside the machines. Sergeant C. JOHNSON observed that there were 3 vending machines next to each other on the east side of the store, which possessed a metal gate around them to prevent anyone from entering them. The first was a Pepsi vending machine, which was unlocked from the front. The coin collection unit, which possessed approximately \$60.00 in quarters, had been removed from the inside of the machine. The second was a Red Bull vending machine, which was missing the bill and coin collection units, along with approximately \$60.00 in quarters as well. The middle vending machine was not disturbed or damaged.

J. HALLET advised Sergeant C. JOHNSON that he was able to obtain video surveillance of the incident. J. HALLETT valued the coin changers that were missing from both machines at \$100.00 each at replacement cost. As Sergeant C. JOHNSON was talking to J. HALLETT, JASON WATSON, who is the owner of Watson Vending, arrived on scene. J. WATSON advised Sergeant C. JOHNSON that he had other vending machines that were illegally entered around Independence, KS.

J. WATSON advised that he needed to check his vending machines at Jayhawk

Cleaners, Borovetz liquor, Community Clothes Closet, Super 8, and Wal-mart to see if those machines had been tampered with or illegally entered. Sergeant C. JOHNSON advised Officer DAMON ATHEY to come to her location and speak to her about more incidents which she believed to be related to the theft at Hallett's Liquor. On arrival Officer D. ATHEY spoke with Sergeant C. JOHNSON, who stated that Hallett's liquor store vending machines were illegally entered and money was taken from inside of the machines. Sergeant C. JOHNSON explained that JASON WATSON from Watson Vending, had reported similar thefts. Sergeant C. JOHNSON advised Officer D. ATHEY to go speak to J. WATSON, who was at Jayhawk's cleaner located at 729 N. 10th St. which is 1/2 block south of Hallett's Liquor. J. WATSON was present, because he was checking his vending machines at that business. Officer D. ATHEY made contact with J. WATSON, who stated that the vending machine at Jayhawk's Cleaners was not illegally entered.

J. WATSON and Officer D. ATHEY went to 120 N. 24th St. Independence, Montgomery County, KS 67301, (Borovetz's Liquor store) where J. WATSON has other vending machines placed for business. It was determined by J. WATSON, that someone did break into the vending machines located at Borovetz Liquor; however left the change inside the vending machine.

Dispatch then notified officers, that DANA WATSON, who is a co-owner of Watson Vending, and who had previously observed J. HALLETT'S security footage, had observed a vehicle that Jeremy Hallett had on the security video surveillance from his business heading west on Laurel St. It should be noted that J. HALLETT had not been able to show officers the video at this time. The vehicle was described as a 2004 yellow Chevrolet Cavalier displaying Kansas registration 518 JXR. Officer D. ATHEY observed the vehicle traveling westbound on Laurel St and 24th St. Officer D. ATHEY attempted to catch up to the vehicle but the driver turned south on 27th St. and Officer D. ATHEY lost sight of the vehicle. Sergeant C. JOHNSON advised a short time later, that the same vehicle was at the intersection of 27th and Myrtle St. unoccupied. Officer D. ATHEY approached the vehicle and a white female came out of the residence of 2101 W. Myrtle St identifying herself as Karena Wilson. Officer D. ATHEY asked K. WILSON if the vehicle belonged to her. K. WILSON stated the vehicle belonged to her boyfriend AUSTIN HARRIS. Officer D. ATHEY asked K. WILSON where A. HARRIS was and K. WILSON stated that he was across the street with his daughter pushing her on the swing. Officer D. ATHEY went over and met with a white male that he knew from previous encounters to be A. HARRIS. Officer D. ATHEY asked A. HARRIS if the yellow Chevrolet Cavalier belonged to him, and A. HARRIS stated that he and K. WILSON had just purchased the vehicle. Officer D. ATHEY advised A. HARRIS of his rights per Miranda and A. HARRIS invoked.

J. HALLETT subsequently came to the location to see if he could identify A. HARRIS from his video footage. J. HALLETT showed Officer D. ATHEY the video of the incident involving the vending machines from previous night. The video showed a white male approach the vending machines. The male begins tampering with the vending machines for several seconds. After several seconds, a white male wearing a

baseball hat approaches the machines on foot from the south and begins looking around. The male who approaches from the south, was identified by officers from prior dealings, and by J. HALLETT as he and A. HARRIS attended school together in the past. A. HARRIS can be seen looking around and appears to be surveying the area while the other male is tampering with the machines. A. HARRIS then exits the view, walking back to the south and then returns a few moments later, driving a yellow Chevrolet Cavalier with a black hood. A. HARRIS exits the vehicle and continues to stand near the vending machines and the other male. After A. HARRIS begins looking around the area again, a white female can be seen stepping out of the passenger side of the vehicle. Officer D. ATHEY and J. HALLETT both recognized the female to be K. WILSON from prior dealings. After several more moments, the male removes a what appears to be a coin collection unit from one of the vending machines, and places it on the ground by the driver side door of A. HARRIS'S vehicle. The male then places the coin collection unit in the vehicle, and returns to the second vending machine and opens it. The male grabs the coin collection unit from the second machine and jogs around the front of the vehicle entering the passenger side. As the male begins jogging, A. HARRIS looks around and also takes a few rapid steps and enters the driver side of the vehicle. A. HARRIS shuts the door, and remains idle for a brief moment. A. HARRIS is then seen exiting the the vehicle again and walks back to the vending machines. A. HARRIS reaches down and picks an item up off of the ground and places it into one of the machines and secures the vending machine doors. A. HARRIS, K. WILSON, and the male are then seen exiting the parking lot in the yellow Chevrolet Cavalier with both coin collection units.

After viewing the video with J. HALLETT, A. HARRIS walked up to Officer D. ATHEY and stated he would now like to talk about what had happened. Officer D. ATHEY re read A. HARRIS his rights per Miranda at 5:36 PM and A. HARRIS agreed to speak to Officer D. ATHEY without an attorney present. A. HARRIS stated that he thought the other male seen in the video was just going to get a drink from the vending machine. A. HARRIS advised that the male started breaking into the vending machine. A. HARRIS stated he was trying to get the subject to stop and just leave the liquor store, but the subject continued breaking into the vending machines to get the money out of them. A. HARRIS stated that the same individual whom he was with at Hallett's Liquor, has been breaking into pop machines all around town and in other towns as well. A. HARRIS stated he only knows the male by the name "BRAD" and that he lives in Neodesha, KS. Sergeant C. JOHNSON asked A. HARRIS why he did not just leave or contact the police, if A. HARRIS knew that "BRAD" was breaking into the vending machines. A. HARRIS stated that he was going to call the police after he dropped his daughter off at her mothers house. A. HARRIS stated this was the first time that he had been with "BRAD" while the he was breaking into the vending machines. A. HARRIS stated "BRAD" told him that he had been going to other towns and doing the same thing with other vending machines.

Officer D. ATHEY issued A. HARRIS and K. WILSON both a notice to appear for the charge of theft; however after review of the incidents by the Detectives Division, the cases were subsequently dismissed from Municipal court at the request of the

Independence Police Department. After review of the incidents, Officer D. ATHEY was advised that both A. HARRIS and K. WILSON needed to be placed under arrest for the above recommended charge. Officer D. ATHEY was unable to locate A. HARRIS and K. WILSON prior to shift change.

Sergeant D. TAYLOR arrived for shift duties on 06/16/2017 and was briefed on the above situation. Sergeant D. TAYLOR contacted Detective DEREK BRYANT and was notified that both A. HARRIS and K. WILSON needed to be placed under arrest in reference to this case if contact was made. Detective D. BRYANT also advised that through the investigation, the male who was with A. HARRIS and K. WILSON, whom A. HARRIS knew as "BRAD" had been identified as BRADLEY DAVIS. Detective D. BRYANT advised that B. DAVIS possessed some type of universal key mechanism which allows him entry into the vending machines. Detective D. BRYANT advised that A. HARRIS and K. WILSON were believed to have facilitated the criminal acts committed by B. DAVIS by providing transportation and serving as "lookouts." It should be noted that the vending machines from IPD cases 17-887, 17-887A, and 17-887B all appeared to have been committed on the same night and all machines appeared to have been illegally entered in the same manner.

Sergeant D. TAYLOR was able to locate A. HARRIS and K. WILSON on 06/16/2017 at the address of 317 N. 10th St. Independence, KS 67301. A. HARRIS and K. WILSON were placed under arrest and escorted to the Montgomery County Department of Corrections where they are waiting to see a judge. Based on Sergeant D. TAYLOR'S training and experience, he knows it to be common for individuals who commit burglaries and thefts, to use transportation such as vehicles. Sergeant D. TAYLOR also knows it to be common for the same individuals to bring another person or persons to assist in surveying the area so they are not seen committing illegal acts by passerby's or police. It should be noted that common behavior of a lookout is consistent with the mannerisms displayed by A. HARRIS and K. WILSON while present on the video provided by J. HALLETT, in which A. HARRIS can be seen looking around and standing near B. DAVIS during the thefts. It should also be noted that A. HARRIS can be seen trying to get back in the vehicle quickly as B. DAVIS begins to jog away from the machines, and K. WILSON rapidly re-enters the vehicle at the same time, which would suggest that A. HARRIS and K. WILSON had full knowledge of the thefts which had occurred.

This affidavit is not intended to be a comprehensive report on the investigation of the allegations, but is limited to showing Probable Cause that one or more violations of the Kansas Criminal Code occurred, Probable Cause that the defendants above named committed the acts that were in such violation, that the same occurred in Montgomery County, Kansas within the time prescribed by the applicable Statute of Limitations.

[Signature]
Affiant 209

ARREST/DETENTION PROBABLE CAUSE DETERMINATION
The court determines from the above affidavit under oath that there is probable cause to believe that the offense(s) of:

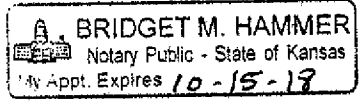
Has been committed by the persons named in the above affidavit and probable cause for the arrest and detention of said person(s)

Signed on _____ at _____ m

Judge

Subscribed and sworn to before me on 6/17/17
at 5:03 a.m.

[Signature]
Notary



- 1. Set forth various charges possible under the facts as presently known.
- 2. Name of person or persons who are alleged to have committed the offense(s).
- 3. State facts and circumstances specifically, in detail, and when and how the information was acquired -- by observation, informant, etc., and if by informant or other hearsay, describe how reliability verified -- (previous proved reliability, corroboration by other physical observation, etc). Additional facts brought out orally before the judge should inserted before signature.

COURT ORIGINAL DETENTION FACILITY PROSECUTING ATTORNEY AFFIANT OR LAW ENFORCEMENT AGENCY OR EXTRA



Lisa Montgomery <lisamontgomery052013@gmail.com>

Karena Wilson 17 CR 269-I

1 message

Bryan Rickman <brickman@sbids.org>

Thu, Nov 16, 2017 at 9:26 AM

To: "Lisa D. Montgomery" <lisamontgomery052013@gmail.com>

Lisa,

Ms. Karena Wilson will agree to resolve her case by pleading no contest to three separate counts of misdemeanor theft. In exchange for her plea, she will agree to testify at Bradley Davis and Austin Harris jury trials.

Ms. Wilson's proffered testimony would be as follows:

Ms. Wilson and Austin Harris were girlfriend/boyfriend at time these thefts occurred.

Ms. Wilson and Mr. Harris would sometimes give rides in their car to other people in exchange for money or gas purchased by the riding people.

On the date of the theft at Hallett's Liquor store an unknown male with an unknown female ask Mr. Harris to give them a ride across town. Mr. Harris has possibly seen the guy a time or two before but Karena doesn't think Austin really knows the guy very well. Karena has never met the guy or the unknown female before. Austin agrees to give the unknown male (now know to be Bradley Davis) and unknown female a ride in his car. The unknown girl is on the heavy side, white and in her 20's. I don't recall if Karena told me what seats they were sitting in the car. It is not in my notes.

As the four are traveling across town, Mr. Davis sees the vending machines at Hallet's Liquor store. Mr. Davis tells Mr. Harris to stop at the vending machine so he can get a drink and he will also get a drink for Austin and Karena. Austin and Bradley go up to the vending machine. Ms. Wilson gets out the car to stretch her legs and wait for her can of Red Bull that she told Mr. Davis that she wanted. Next thing she knows is that Mr. Davis is doing something with the vending machine and he and Austin return to the car with David having a coin box. Harris and Wilson go back to there home and tell Davis and the unknown girl to get out and leave. The next day, Austin and Karena find a coin bucket in the back seat of Austin's car and she and Austin take the coin bucket to the police department.

Ms. Wilson does not know anything more than this. She does not know anything about the other two vending machine thefts.

If Ms. Wilson's plea offer and proffer is acceptable to the State of Kansas, I would propose that we continue the arraignment hearing and have Ms. Wilson waive her speedy trial and to make a full and complete statement in accordance with her proffered testimony and upon completion of Mr. Davis and Mr. Harris' vending machine theft cases, that she enter no contest pleas to the three misdemeanor theft charges as proposed.

Please advise.

Bryan

This e-mail message contains CONFIDENTIAL information which is (a) ATTORNEY-CLIENT PRIVILEGED COMMUNICATION, WORK PRODUCT, PROPRIETARY IN NATURE, OR OTHERWISE PROTECTED BY LAW FROM DISCLOSURE, and (b) intended only for the use of the Addressee(s) named herein. If you are not an Addressee, or the person responsible for delivering this to an Addressee, you are hereby notified that reading, copying, or distributing this message is prohibited. If you have received this e-mail message in error, please reply to the sender. Thank you.

EXHIBIT 3



**OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT**

MARC BENNETT
District Attorney

ANN SWEGLE
Deputy District Attorney, Administration

JUSTIN EDWARDS
Deputy District Attorney, Trial Division

RON PASCHAL
*Deputy District Attorney, Juvenile
Division and Ethics Coordinator*

December 15, 2017

Re: ACLU December 2017 report:
"Choosing Incarceration"

A RESPONSE BASED ON REALITY

The ACLU issued a 30 page report this month castigating Kansas prosecutors for what the organization couches as our refusal to utilize diversions as an alternative to incarceration. Prosecutors, according to the narrative presented by the ACLU, simply choose to send people to prison and reject out of hand, without reason or justification the humane alternative of diversion.

What could have been a beneficial effort to enlighten and make salient suggestions to policy makers concerning how diversion might be expanded in Kansas is instead a disappointing, invective-filled screed replete with sweeping generalizations and more omissions and mischaracterizations than factually defensible assertions. Frankly, it's hard to know where to start dismantling the erroneous picture of our criminal justice system put forth by the ACLU.

Diversion in the Real World

What is diversion? State statute defines it as a "*supervised performance program prior to adjudication*"¹ In other words, diversion is an opportunity to hold someone accountable without a formal conviction. *Kansas Statutes Annotated* 22-2906 provides a laundry list of factors the prosecutor is to consider before granting diversion. Additionally, off grid crimes (Jessica's Law child sex offenses, Capital Murder and 1st Degree Murder) and severity level 1, 2 and 3 nondrug crimes (2nd Degree Murder, Aggravated Kidnapping and other serious crimes) and severity level 1 and 2 drug crimes (for instance, Sale of Meth) are not eligible under the statute.

¹ K.S.A. 22-2906(3).

Diversion programs typically require the defendant to pay restitution², maintain employment, complete drug treatment or anger management as necessary and achieve certain education goals—all contingent on the person staying out of trouble for a set period of time. Because there is not a conviction³, state law⁴ does not allow a defendant who is placed on diversion to be supervised by a probation officer (court services and community corrections). Meaning, it falls on the County Attorney or District Attorney to “supervise” the diversion of the suspect. Our staff members are not probation officers, they don’t make home visits or go to job sites. Instead, we provide a list of requirements to defendants placed on diversion and it falls on the defendant to meet the requirements and show proof of the same. We work with diverted subjects but if they cannot meet the requirements of the diversion contract, their diversion is withdrawn and they are placed back on the trial docket.

A person with drug/alcohol or mental health issues or a history of sexual or physical abuse will need more help and intensive supervision than a staff member in a prosecutor’s office can provide. The reality is that most county attorney’s offices in Kansas employ a single attorney with 1 or 2 staff members—many of whom are *not* full time and instead supplement their work as part time prosecutors with a private practice, some even doing criminal defense work in neighboring counties.

The ACLU’s report glosses over reality, blithely opining that if we would just offer diversion to everyone, people with addiction and complex histories of abuse would *ipso facto* never go to prison. Does the report assume access to addiction and trauma specialists in all communities (truly a false assumption in rural counties)? Are county prosecutors supposed to ask our respective county commissions to add such professionals to our own staffing tables? The inescapable reality is that many addicts relapse and sometimes engage in criminal conduct to feed their habits. How exactly does a diversion program run out of the county prosecutor’s office address this reality?

The report formally recommends that Kansas law be amended to require, “prosecutors to make all defendants aware, at the time of arrest, that they can request diversion.” Is the ACLU stuck in such an echo chamber that it seriously believes Kansas want prosecutors to amend the law and offer diversion to “all defendants?” Child abusers? Drug dealers? Quadruple

2 For example, Sedgwick County collected over \$126,000 in restitution from adults placed on diversion in 2016.

3 In fact, K.S.A. 22-2910 prohibits prosecutors from requiring convictions as a condition to diversion.

murderers?⁵

The False “Choice” – Prison instead of Diversion

Diversion is not a one-to-one alternative to incarceration. Diversion is an alternative to *conviction*. The ACLU’s narrative incorrectly frames the issue in the inverse – suggesting that prosecutors refuse to allow diversion and instead “choose” to send people directly to prison.

In fact, defendants sentenced under the Kansas sentencing grid go to prison⁶ when (1) convicted of a “presumptive prison” offense or (2) placed on probation for a “presumptive probation” offense and then being sent to prison after multiple violations of probation terms.

To be clear, the only way the stark dichotomy framed by the ACLU – that prosecutors chose prison instead of diversion – holds water is if that organization is seriously advocating that prosecutors should offer diversion to people charged with serious person felonies or people with person felony convictions in their past.⁷ While it seems unlikely that is their ultimate goal, their report would be a harder sell if the ACLU had to acknowledge that they are actually accusing prosecutors of being draconian for refusing to offer diversion to people accused of presumptive prison offenses like Aggravated (Great Bodily Harm) Battery, Aggravated Sexual Battery, Sexual Exploitation of a Child or Sale of Methamphetamine. “*Kansas prosecutors chose prison for people Kansas law says are presumed to go to prison,*” doesn’t have the same morally condemnatory ring to it, I suppose.

Even if one assumes the ACLU instead meant to suggest that presumptive probation cases should be offered diversion more frequently and perhaps just overstated the “choice” prosecutors make—a quick examination of the realities of probation under Kansas law is also instructive.

Defendants in presumptive probation cases do not go to prison until they have been placed on probation⁸, then failed at said probation, then been given intermediate sanctions (the “quick dip”) under SB 2170, then given a second chance at probation, then failed a second time and, depending on the specific findings the judge would be required to make⁹, given a third

4. K.S.A. 21-4704b

5. Note that murder in Kansas is up 46%, rape is up 11% and robbery is up 26% since 2014:

<http://www.kansas.com/news/politics-government/article176788606.html>

6. Upward dispositional departure sentences are a third, rarely used option available to the court only if the prosecutor files written notice to the defense.

7. At least one prior person felony for drug crimes and two or more for all non-drug crimes.

8. Unless the defendant commits a new felony while already on probation. In these cases, the judge still has the option of re-instating the original probation.

9. The judge would have to make the specific finding that public safety/welfare requires incarceration.

chance with a second intermediate sanction (“quick soak”). If a defendant then failed at probation for a third time, only then could he go to prison. Note also under SB 2170, “technical violations” like positive drug tests, are no longer a solely sufficient basis to revoke probation and impose the sentence.

Given these realities, the argument that millions in savings await the state if diversion were simply offered to more presumptive probation defendants is demonstrably without merit. Probationers who successfully complete probation will never go to prison—as such, there are no prison costs to be saved. That leaves people placed on probation who ultimately fail at probation and go to prison. Offering diversion to these people would have saved the state millions? Upon what basis are we to conclude that a person who could not successfully complete probation—despite the supervision of a state probation officer with access to SB 123 treatment funds who was afforded fully three bites at the probation apple before ultimate revocation—would have succeeded on a diversion program supervised by a county attorney or his/her support staff?

In reality, diversion works for people with little criminal history who committed relatively low level crimes. In other words, people who are unlikely to go to prison even if convicted and placed on probation.

“Mr. Rawlins vs. Mr. Cheyenne”

To explain the consequence of prosecutor’s supposed either/or choice to send people to prison and withhold diversion, the ACLU employed the example of Mr. Rawlins and Mr. Cheyenne, named for the respective counties. The two hypothetical men are charged with the same unidentified crime and face a three year sentence. Because Rawlins County offers diversion, Mr. Rawlins avoids prison while Mr. Cheyenne is sentenced to 3 years of prison because his county did not offer diversion for this offense. Note that both counties do have diversion policies and that the December of 2015 version of Cheyenne County’s program can be found on-line at <http://cncoks.us/files/documents/Diversion-Policy.pdf>. It includes felonies as diversion eligible crimes.

So, of what hypothetical crime might they have been convicted? Though the report does not say, because the men faced a 36 month sentence, a working knowledge of the Kansas sentencing grid provides the possible answers. It had to have been (1) a severity level 5 non-drug offense, like Involuntary Manslaughter, Reckless Aggravated Battery (resulting in great bodily harm), Aggravated Sexual Battery, or Robbery or (2) a severity level 6 offense like Indecent

Solicitation of a Child -- but only for a defendant with a prior person felony conviction, making him a criminal history category “D”¹⁰; or finally, (3) a person who possessed methamphetamine, cocaine or heroin¹¹ after already having one or more prior convictions for a person felony¹².

So, the hypothetical defendants both had to have been charged with a crime that our state law defines as “presumptive prison.” In other words, crimes that the public policy of Kansas says are deserving of incarceration. There is no *presumptive probation* grid box on either the drug or non-drug grid that would result in a 36 months sentence.

Was the ACLU suggesting that the hypothetical Mr. Rawlins should have received diversion for involuntary manslaughter, robbery, aggravated sexual battery or, possession of methamphetamines after a prior person felony conviction?

Investment

What does it take to run a diversion program? In Sedgwick County, we have 8 full time employees in the office of the District Attorney who do nothing but handle diversion – 3 for adult cases, 1 for traffic and 4 for juvenile. Our budget currently earmarks \$331,631 annually for diversion staff.

Since 2013, the Office of the District Attorney in Sedgwick County has taken several deliberate steps to expand diversion by adding diversion-eligible crimes, cutting the diversion application fee in half and accepting people with a prior non-person felony conviction after the passage of time.

Despite these efforts in 2016 we had 113 applications for diversion in nondrug criminal cases, 209 for misdemeanor traffic offenses¹³ and 41 applications in drug cases for a total of 363 applications. That same year, 3,729 criminal cases were filed in Sedgwick County, of which 3,221 were felonies. As such, the 154 applications for criminal (excluding misdemeanor traffic) diversion constituted 4.7 percent of the 3,221 felonies filed in 2016.

10. Any fewer convictions in their criminal history would not have resulted in a 36 month sentence under Kansas law.

11. It cannot be first time possession of marijuana because both first AND second time possession of marijuana are now misdemeanors. So, if charged with felony possession of marijuana, a defendant facing presumptive prison would have to have been convicted twice before in separate cases of possession of marijuana AND picked up conviction(s) along the way for one or more *additional* person felonies.

12. While one could cobble together two or three presumptive probations charges and run them consecutive to reach 36 months, as stated above, presumptive probation cases don't result in the choice between prison and diversion set up by the ACLU's hypothetical.

13. Traffic includes DUI, Minor in possession of alcohol, minor in consumption of alcohol and transport open container of alcohol.

After review of the applications, we rejected 21% of the criminal and drug applicants¹⁴, while 13% of the applications remained pending at the end of the year.¹⁵ 7% of the applicants¹⁶ withdrew their applications during the process. During the year, 8 people placed on criminal diversion and 12 people on drug diversion violated their diversion contract.

The ACLU makes the blanket statement that Sedgwick County diverted only 2% of our cases without acknowledging how few people apply for diversion in the first place; how many applications were still pending at the end of the year, how few of those who apply are rejected and how few of those who are accepted ultimately violate diversion.

Contrary to the ACLU's hyperbolic assertion that "Diversion programs are a well-kept secret, with many eligible applicants totally unaware of the option's existence," the truth is that *each* person charged with a felony in Sedgwick County is provided a copy of our diversion guidelines at the time of their first appearance. Their report offers the additional unsupported generalization that people must surely be discouraged from applying for diversion because of the "patchwork" of diversion rules across the state and the supposed complexity of the process. This ignores the fact that all people charged with a crime—misdemeanor or felony—are appointed counsel if they can't afford one. Defense counsel are more than capable of explaining both the benefits of diversion and the process and advocating for their clients who apply.

Additionally, the ACLU's suggestion that fines and fees discourage application is also without merit. In 2016, Sedgwick County collected a total of \$957.00 in fines from the 200+ people placed on criminal and drug cases. Court costs, lab fees and restitution are also collected but are statutory and would have been collected had defendants been convicted and placed on probation.

Perhaps, instead of attacking prosecutors for low diversion numbers the ACLU could have inquired as to why so few citizens are interested in pursuing diversion. Does the defense bar steer clients away from diversion? Do people have less disposable income to spend on applications? Does the Office of the District Attorney simply screen out more low level, low criminal history cases at the initial charging decision leaving fewer people accused of diversion eligible crimes? Did the passage of SB 123 in 2003 and HB 2170 in 2013 have any impact on the relative interest in diversion applications?

14. 28 criminal applications and 5 drug applications.

15. 14 criminal applications and 7 drug applications.

In Sedgwick County, we put extensive resources into our diversion programs. We discuss the process at the local criminal law committee meeting held each month—which lead directly to several improvements in our system over the past several years. In juvenile offender cases, we received 438 applicants out of the 1,165 juvenile offender cases¹⁷ filed in 2016. Of those who applied, we accepted 291 juveniles into diversion in 2016 (24% of the juvenile offender cases filed); 260 in 2014; and 289 in 2013.

How many counties have the resources to hire full time diversion staff for the prosecutor’s office? Again, the State does not fund diversion, County Attorney and District Attorney budgets come from county coffers.

Percentages

The report rejects out of hand the suggestion that local resources drive in any way the availability or viability of diversion. In support, they cite to the fact that western Kansas counties, with lower populations actually grant diversion at nearly 9% while larger counties are as low as 2 %. General statistics may have their place, but are decidedly irrelevant to a meaningful assessment of diversion in Kansas.

Looking again at Cheyenne and Rawlins counties, the 2016 report from the Kansas Sentencing Commission¹⁸ states that each of these counties sentenced 3 felony cases that year. These are counties with populations of 2,679 and 2,506 respectively. Sedgwick County by comparison filed more felony cases in 2016 (3,221) than the total population of either county.

According to the ACLU’s report, Rawlins County diverted 37% of its cases in 2016 while Cheyenne County diverted none. The ACLU does not state how many total cases either county filed in 2016, but if we were to assume Rawlins County filed twice as many felony cases as it sentenced, 6 cases with 3 sentenced means that, at most, they placed two people on diversion. With all due respect, diverting 2 out of 6 felonies filed—or even 3 of 10 or 7 out of 20—annually, is not a diversion program, it’s an anecdote.

As to Cheyenne County, if the felonies they filed were all severity level 3 nondrug offenses—that are not diversion eligible by state law—they would have 0% diversion. That would not constitute a failure, the county attorney would simply be following state law. Conversely, if 2 of felonies were for 3rd time DUI (not diversion eligible under state law) and the

16. 9 criminal applications and 3 drug applications.

17. 310 felonies and 855 misdemeanors.

rest were 3rd time shoplift cases which are served in county jail not prison – there is no cost savings because none of the defendants were eligible to go to prison in the first place.

The truth is, I don't know how many felonies either county charged last year or what kinds of felonies were filed. The ACLU request for information from prosecutors did not request that kind of information. But without those details, any conclusions that *anyone* purports to draw about Rawlins or Cheyenne Counties and the efficacy of their respective diversion programs is based not on fact but supposition.

Rawlins and Cheyenne Counties are interesting because when it comes to felonies sentenced in 2016, they are representative of many western Kansas counties—counties the ACLU suggests larger counties could easily emulate.

The Sentencing Commission 2016 annual report states that Douglas County sentenced 349 separate felony cases; Shawnee County 1,088, Johnson County 1,793 and Sedgwick County 3,410. Of the sentences imposed in Sedgwick County, 77% were non-drug offenses ¹⁹. Sedgwick County also sentenced 40 murders, 23 Rapes, 126 Aggravated Assaults and 120 Robberies²⁰. We have over 65 defendants pending homicide cases as of today's date. How many of the felonies filed in western Kansas counties were for crimes of violence? If we are comparing larger metropolitan counties to western Kansas, should we know what percentage of the felonies filed in a given county are diversion eligible under state law?

Again, compared to the 3,410 felony cases Sedgwick County sentenced in 2016, what follows is a list of the number of felons sentenced in counties across western Kansas in 2016: Wallace (9); Greeley (5); Hamilton (5) ; Stanton (4) Morton (4) Logan (16); Wichita (4) Kearney (9); Stevens (28); Gove (0); Sheridan (2); Decatur (3); Haskell (14); Smith (7); Osborne (7); Stafford (6); Barber (10); Clark (6) Hodgeman (6); Ness (3); Graham (4); Norton (4); Edwards (8); Kiowa (17); Rush (14); Rooks (19); Phillips (15).

In fact, excluding Garden City, Dodge City, Hays and Colby, most western Kansas counties deal in single and low double digit felonies each year. That these offices are able to divert 1, 2 or even 5 or 6 people in one year charged with unidentified felonies²¹ is commendable, but to suggest that larger offices can simply follow suit ignores the reality of the

18. Chapter 1, pages 6-10.

19. Page 95 – appendix 1 – 117/124 pp.

20. Chapter 1, page 6; 28/124 pp.

21. Are we talking about criminal damage to property and auto burglary or robbery and aggravated sexual battery?

real numbers we face.

Other Issues Omitted in the Report

While the ACLU's report took pains to skewer prosecutors for "choosing" to deny diversion, the report discounted the discretion we use each day when making initial charging decision, taking time only to warn in typical hyperbolic language that prosecutors—"the most powerful official that no one knows"—decide "without consulting anyone" whether to charge cases and whether to offer diversion.

There is no case to divert if the prosecutor who reviews the case does not believe a case should be charged. We exercise the discretion to charge or decline cases based on our ethical rules (KRPC 3.8[a]) and case law. Was the crime serious enough to constitute a felony or should it be referred to the municipal court as a misdemeanor? Does the victim want to prosecute the case after restitution has already been paid? Is the evidence insufficient to establish guilt? Before policy makers engage in a discussion as to whether more cases should be diverted, it must first be acknowledged that a prosecutor initially assessed the case as worthy of formal felony charging²².

The report's argument that millions would be saved by placing people on diversion offers no support or explanation. Based on what? Did the authors simply conclude that if placed on diversion a presumptive prison defendant would never go to prison or commit a new crime? That a presumptive probation defendant would have been successful on diversion where he failed on probation? Without the infrastructure to support diversion programs in county prosecutor's offices – what makes the authors conclude that diversion will save incarceration costs? We might as well put an arbitrary cap on the number of felony crimes we can file each year. That too would keep incarceration costs down.

In conclusion, if the legislature wants to address how we as a state ensure that people with drug and alcohol issues, mental illness and histories that include abuse should have a pathway to accountability and rehabilitation without a conviction, the prosecutors of Kansas stand ready to have that discussion. If the legislature wants to discuss ways that we can ensure diversion eligibility is uniform across the state—again, we are ready to contribute.

But such a discussion will require a commitment to adequately fund any programs implemented, an open and honest dialog and a statewide approach based on facts not invective

22. In Shawnee County where grand juries are utilized, the threshold decision is whether to present the case to the grand jury.

and omissions. The prosecutors of this state engaged with the ACLU and provided the information requested and hoped the results might further this conversation. The report now disseminated is a disappointing and unprofessional effort to mislead through omission, misstatement and hyperbole.

The retort already offered by the ALCU is that they simply used the numbers we provided. Really? If your neighbor tells you he had a career .300 batting average on his college baseball team but conveniently withholds the fact that he went 1 for 3 in the only game in which he played – you might be inclined to conclude he was, at best, disingenuous. Numbers on a page mean nothing until they are interpreted and explained. Look no further than the hyperbolic and intentionally misleading hypothetical of Mr. Rawlins and Mr. Cheyenne. After the most basic examination, the entire construct falls immediately apart. No prosecutor faces the dilemma of sending someone to prison for 36 months or, in the stark alternative, the freedom of diversion—unless the ACLU wants to come out and say that it is seriously suggesting we need to divert people for crimes like Involuntary Manslaughter. It's simply a false narrative. We expected more from the ACLU.

Kansas prosecutors remain committed to engaging with policy makers to improve the current system of justice, to enhance the availability of treatment options and alternatives to incarceration and to doing so in a framework that protects public safety.

Sincerely,

Marc Bennett
District Attorney
(316) 660-3737

316/660-3737 | Marc.Bennett@sedgwick.gov

Exhibit 20

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 119,493

KANSAS CROSSROADS FOUNDATION,
AND
KARENA WILSON,
Petitioners,

v.

LARRY MARKLE, IN HIS OFFICIAL CAPACITY AS
COUNTY ATTORNEY OF MONTGOMERY COUNTY,
Respondent.

ORDER

Respondent's response to the petition for writ of mandamus is noted.

The petition for writ of mandamus is ordered transferred to the Montgomery County District Court under Supreme Court Rule 9.01(b) (2018 Kan. S. Ct. R. 58). The district court is advised to first examine Petitioners' standing before proceeding to the merits if warranted. See *Landrum v. Goering*, 306 Kan. 867, 872, 397 P.3d 1181 (2017) ("Generally, a private citizen may seek to compel the performance of a public duty only where he or she can show '"an injury or interest specific and peculiar to himself, and not one that he shares with the community in general.'" [Citations omitted.]"); *Kansas Bar Ass'n v. Judges of the Third Judicial Dist.*, 270 Kan. 489, 491, 14 P.3d 1154 (2000) ("Whether or not a private individual has brought himself within the narrow limits of [this] well-established rule must be determined from the particular facts of each individual case." [Citation omitted.]").

BY ORDER OF THE COURT this 20th day of November 2018.



LAWTON R. NUSS, Chief Justice

**CITED
UNPUBLISHED
DECISIONS**

Emerson v. Kan. Dep't of Soc. & Rehab. Servs.

Court of Appeals of Kansas

September 17, 2010, Opinion Filed

No. 103,486

Reporter

2010 Kan. App. Unpub. LEXIS 679 *; 238 P.3d 764

CECIL W. EMERSON, Appellant, v. KANSAS
DEPARTMENT OF SOCIAL AND REHABILITATION
SERVICES, et al., Appellees.

Notice: NOT DESIGNATED FOR PUBLICATION.

PLEASE CONSULT THE KANSAS RULES FOR
CITATION OF UNPUBLISHED OPINIONS.

PUBLISHED IN TABLE FORMAT IN THE PACIFIC
REPORTER.

Prior History: [*1] Appeal from Shawnee District Court;
CHARLES E. ANDREWS, JR., judge.

Disposition: Affirmed in part and reversed in part.

Counsel: Cecil W. Emerson, appellant, Pro se.

Lawrence T. Buening, Jr., and Danny J. Baumgarte, litigation
attorneys, of Kansas Department of Social and Rehabilitation
Services, for appellees.

Judges: Before MALONE, P.J., PIERRON, J., and
BUKATY, S.J.

Opinion

MEMORANDUM OPINION

Per Curiam: Cecil W. Emerson appeals the district court's dismissal of his petition for a writ of mandamus and the district court's imposition of a sanction. We affirm the district court's dismissal of Emerson's mandamus petition, but we reverse the district court's imposition of the sanction.

Emerson is confined at Larned State Hospital (Larned) as a sexually violent predator. On August 6, 2009, Emerson filed a petition for writ of mandamus with the Shawnee County District Court seeking to enjoin the Kansas Department of Social and Rehabilitation Services (SRS) from issuing demands for reimbursement of the costs of his treatment and stay at the hospital. In response, SRS filed a motion to dismiss

and a motion for sanctions. The motion to dismiss was based on three grounds: (1) Emerson lacked standing to bring a mandamus action because [*2] he had not demonstrated a specific and particularized injury, (2) mandamus was not an appropriate vehicle for relief because other adequate remedies existed at law, and (3) mandamus relief was not appropriate because Emerson did not establish that SRS failed to perform a clearly defined, ministerial duty.

Without conducting a hearing, the district court dismissed Emerson's petition, finding that the challenged conduct by SRS was not ministerial and therefore outside the scope of mandamus. The district court sanctioned Emerson by requiring him to pay the filing fee on any further action filed in Shawnee County. Emerson timely appealed.

On appeal, Emerson contends the district court erred by dismissing his petition for writ of mandamus. Emerson argues that mandamus was appropriate relief because he requested an authoritative interpretation of the law for SRS's performance of a ministerial duty, *i.e.*, SRS's ability to demand reimbursement from residents of the sexual predator treatment program. Whether mandamus is appropriate involves interpretation of the applicable procedural and substantive law, a question over which this court has unlimited review. See [*State ex rel. Slusher v. City of Leavenworth*, 285 Kan. 438, 443, 172 P.3d 1154 \(2007\)](#).

Mandamus [*3] is a proceeding to compel an inferior court, tribunal, board, corporation, or person to perform a specified duty created by the entity's official station or by operation of law. See [*K.S.A. 60-801*](#); [*S.M. v. Johnson*, 290 Kan. 11, 13, 221 P.3d 99 \(2009\)](#). A writ of mandamus is extraordinary relief, meaning that a court will generally issue the writ only where other legal avenues for relief will provide inadequate results. See [*State v. Becker*, 264 Kan. 804, 807, 958 P.2d 627 \(1998\)](#) (noting that mandamus is not a common means of obtaining redress, but is available only in rare cases and as a last resort).

Generally, a writ of mandamus is only appropriate to compel a ministerial duty, *i.e.*, a duty that a public officer or agent is required, by mandate of legal authority, to perform based upon a given set of facts in a prescribed manner without

regard to his or her judgment or opinion regarding the propriety of the act to be performed. See [Schmidtlien Electric, Inc. v. Greathouse](#), 278 Kan. 810, 833, 104 P.3d 378 (2005). However, the Kansas Supreme Court has directed that mandamus may be appropriate to compel a public official to perform a discretionary duty if the petitioner could be denied [*4] a legal right or privilege without a remedy on appeal or if the issue presented in the petition is of great public importance and concern. See [S.M., 290 Kan. at 13](#). The burden of showing an entitlement to mandamus relief rests with the petitioner. Mandamus cannot be used to compel performance of a duty that is substantially in dispute. Unless the legal duty is clear, a writ of mandamus should not be issued. [S.M., 290 Kan. at 14](#); [Schmidtlien Electric, Inc.](#), 278 Kan. at 833.

Essentially, Emerson contends that SRS is not authorized by law to demand reimbursement from him for his hospitalization because he is legally disabled by virtue of his confinement. SRS responds that mandamus is inappropriate in this case because: (1) Emerson has not alleged a specific and peculiar injury; (2) other adequate remedies exist at law; and (3) Emerson failed to identify a clearly defined, ministerial duty that SRS has failed to perform. Though the district court denied the petition only on the ground that the challenged conduct was not ministerial, the other arguments raised by SRS may be alternative grounds of affirming the district court's judgment. See [Robbins v. City of Wichita](#), 285 Kan. 455, 472, 172 P.3d 1187 (2007) [*5] (a decision by a district court that reaches the correct result will be upheld by an appellate court even though the district court relied upon erroneous legal reasoning).

STANDING

SRS contends that Emerson cannot establish standing to challenge the statute authorizing demand for reimbursement because his injury is not specific to himself but is potentially shared with his entire community, *i.e.*, any person who is committed to a state hospital. While it is true that mandamus will not issue at the request of a private citizen absent some demonstration of an injury or interest specific and peculiar to him or her, this requirement is not sufficiently different from the standing requirement in any judicial determination. See [Kansas Bar Ass'n v. Judges of the Third Judicial Dist.](#), 270 Kan. 489, 491, 14 P.3d 1154 (2000) (where an individual shows an injury or interest specific and peculiar to the individual, the remedy of mandamus is available).

Here, it is undisputed that SRS has made demand against Emerson for reimbursement of the costs of his institutionalization under [K.S.A. 59-2006](#). The mere fact that other persons institutionalized such as Emerson may be

subject to similar demands does [*6] not remove the fact that Emerson has a specific injury arising from SRS's demand for payment against him. By making demand for reimbursement, SRS has clearly placed Emerson under an obligation to pay a portion, if not all, of the costs of his maintenance, care, and treatment at Larned. See [K.S.A. 59-2006\(c\)](#). We conclude Emerson has standing to challenge SRS's demand.

OTHER LEGAL REMEDIES

SRS also has alleged that mandamus is inappropriate because other legal remedies are adequate to protect Emerson's rights. Emerson's claim rests upon an interpretation of [K.S.A. 59-2006](#) and not upon any articulated constitutional principle. Therefore, an attempt to litigate his claim in a habeas corpus proceeding under [K.S.A. 60-1501](#) would ultimately fail. See [Ramirez v. State](#), 23 Kan. App. 2d 445, 448, 931 P.2d 1265, rev. denied 262 Kan. 962 (1997) (habeas corpus proceeding must include allegations of a constitutional dimension).

However, [K.S.A. 59-2006c](#) provides a method for appealing a reimbursement demand by SRS:

"Any patient or his or her relative liable for his or her support under this act may appeal to the secretary of social and rehabilitation services pursuant to [K.S.A. 75-3306](#) from any decision [*7] of the state hospital or employee of the department of social and rehabilitation services in compromising or refusing to compromise a claim against said patient or relative for the cost of treatment of such patient."

Emerson's claim is that he should not be required to reimburse any costs associated with his maintenance, care, and treatment because his confinement constitutes a legal disability. To the extent that Emerson has presented this argument to Larned and the argument has been rejected, [K.S.A. 59-2006c](#) provides a remedy at law for challenging the hospital's determination. Apparently, Emerson did not attempt to pursue this remedy. However, a writ of mandamus is not appropriate when a petitioner possesses another legal avenue for relief. [Becker](#), 264 Kan. at 807. Accordingly, the district court properly dismissed Emerson's mandamus petition because Emerson had an adequate remedy at law, although the district court did not rely on this ground in dismissing the petition.

CLEARLY DEFINED, MINISTERIAL DUTY

SRS further contends that Emerson's complaint is not properly subject to a writ of mandamus because Emerson has not articulated a clearly defined, ministerial duty that SRS has failed [*8] to perform. Emerson's challenge to SRS's conduct rests in the agency's implementation of a statutory duty that Emerson claims does not apply to him. Because the duty at

issue is governed by statute, this court possesses unlimited review. *State ex rel. Slusher*, 285 Kan. at 443.

In pertinent part, *K.S.A. 59-2006* provides:

"(a) A person's spouse and the parents of a person who is a minor shall be bound by law to support the person if the person is committed to, admitted to, transferred to or received as a patient at a state institution. Payment for the maintenance, care and treatment of any patient in a state institution irrespective of the manner of such patient's admission shall be paid by the patient, by the conservator of such patient's estate or by any person bound by law to support such patient. The secretary of social and rehabilitation services may recover the basic maximum charge established as provided for in subsection (a) of *K.S.A. 59-2006b* and amendments thereto, or the actual per patient costs established as provided in subsection (b) of *K.S.A. 59-2006b* and amendments thereto, as compensation for the maintenance, care and treatment of a patient from such patient when no legal [*9] disability exists, or from the estate of such patient or from any person bound by law to support such patient.

"(b) The secretary of social and rehabilitation services shall periodically and not less than once during each fiscal year make written demand upon the patient or person liable for the amount claimed by the secretary to have accrued since the last demand was made, and no action shall be commenced by the secretary against such patient or such patient's responsible relatives for the recovery thereof unless such action is commenced within three years after the date of such written demand."

The statutory language is clear and unambiguous. SRS has the affirmative duty to serve written demand for reimbursement upon Emerson as a patient of Larned. *K.S.A. 59-2006(b)*; *K.S.A. 59-2006b(c)*. SRS may exercise limited discretion in the method of calculating the amount of reimbursement. *K.S.A. 59-2006(a)*. Moreover, SRS possesses discretion in accepting a lesser payment as satisfaction for the amount demanded. *K.S.A. 59-2006(c)*. But, compliance with the initial demand requirements of *K.S.A. 59-2006(a)* and *(b)* is not a discretionary function of SRS but a ministerial one. See *Schmidtlien Electric, Inc.*, 278 Kan. at 833 [*10] (defining ministerial acts).

Nevertheless, to the extent that SRS has made written demand on Emerson, SRS's actions are not subject to a writ of mandamus because SRS has clearly complied with the statutory requirements of *K.S.A. 59-2006*. Contrary to Emerson's claims, a legal disability has no effect upon SRS's demand for reimbursement but only SRS's ability to recover

the amount demanded. Emerson has not claimed that SRS has attempted to recover the amount demanded from him, and the record on appeal does not indicate that SRS has attempted such a recovery. As a result, Emerson's claim does not establish SRS's violation of a clearly defined, ministerial duty that is appropriate for issuance of a writ of mandamus. The district court properly dismissed Emerson's petition because the requested relief exceeded the scope of a writ of mandamus.

IMPOSITION OF A SANCTION

Finally, Emerson challenges the district court's imposition of a sanction, claiming the district court provided inadequate support for the sanction imposed. It is unclear whether Emerson challenges the basis for the sanction, the type of sanction imposed, or both.

In pertinent part, *K.S.A. 60-211* provides:

"(a). . . A pleading, [*11] motion or other paper provided for by this article of a party who is not represented by an attorney shall be signed by the party and shall state the party's address. . . .

"(b) The signature of a person constitutes a certificate by the person that the person has read the pleading, motion or other paper and that to the best of the person's knowledge, information and belief formed after an inquiry reasonable under the circumstances:

- (1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;

. . . .

"(c). . . If a pleading, motion or other paper provided for by this article is signed in violation of this section, the court, upon motion or upon its own initiative upon notice [*12] and after opportunity to be heard, shall impose upon the person who signed it or a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including reasonable attorney fees."

When reviewing the imposition of a sanction, an appellate

court uses a mixed standard of review. For challenges to the decision to award a sanction, the appellate court reviews the record for substantial competent evidence to support the district court's findings that [K.S.A. 60-211](#) has been violated. For challenges to the propriety of the type of sanction imposed, the appellate court applies an abuse of discretion standard of review. [Evenson Trucking Co. v. Aranda](#), 280 Kan. 821, 835-36, 127 P.3d 292 (2006).

Violation of [K.S.A. 60-211](#)

Although the district court found that Emerson had violated [K.S.A. 60-211](#), the district court did not specify which subsection of the statute Emerson had violated in filing his petition for writ of mandamus. SRS's motion for sanctions is not helpful in determining the specific violation because the motion charged Emerson [*13] with violations of [subsections \(b\)\(1\), \(b\)\(2\), and \(b\)\(3\)](#). Therefore, it is impossible to determine which of the three subsections the district court believed Emerson had violated in his petition for writ of mandamus. Appellate review of the district court's finding that a sanction was warranted is further complicated by the complete lack of findings on the record. In ordering a sanction, the district court merely stated, "The Court agrees with defendants that the plaintiff's pleadings were filed in violation of [K.S.A. 60-211](#)."

A review of the record provides no indication that Emerson's petition was filed for an improper purpose. Instead, Emerson appears genuinely concerned about the demand for payment requested by SRS. The record also does not indicate that Emerson has abused the judicial process by repeated filings of the same claim. Accordingly, SRS has not demonstrated a violation of [K.S.A. 60-211\(b\)\(1\)](#). Furthermore, SRS has not disputed the essential factual allegations raised by Emerson, and the record does not support a finding that Emerson violated [K.S.A. 60-211\(b\)\(3\)](#).

While this court has concluded that Emerson's petition for writ of mandamus cannot stand, an unsuccessful legal [*14] argument does not automatically constitute a violation of [K.S.A. 60-211\(b\)\(2\)](#). Pro se litigants are given the benefit of liberal construction of their pleadings. [Bruner v. State](#), 277 Kan. 603, 605, 88 P.3d 214 (2004). While a court is not required to make arguments for pro se litigants, a court is required to give effect to the substance of the arguments rather than the form in which the arguments are raised. [In re Estate of Broderick](#), 34 Kan. App. 2d 695, 701, 125 P.3d 564 (2005). This rule suggests that the mere filing of a claim using an improper procedural vehicle, such as mandamus, is not necessarily sanctionable.

As presented in this record, Emerson's claim was dismissed solely because mandamus was not the appropriate procedural vehicle for the relief he requested. The district court never addressed the substance of Emerson's claim. As a result, the district court never reached the question of whether the substance of Emerson's claim was devoid of support in existing law or a reasonable argument for the extension of the law. The record does not contain substantial competent evidence that Emerson's petition violated [K.S.A. 60-211\(b\)\(2\)](#).

Propriety of the Sanction Imposed

Even if Emerson [*15] had violated [K.S.A. 60-211](#), the sanction imposed by the district court was not commensurate with Emerson's conduct. The district court ordered that "[i]f [Emerson] is to file any further legal action in Shawnee County he will be required to pay the full filing fee. No poverty affidavit will be accepted."

In [Wood v. Groh](#), 269 Kan. 420, 431, 7 P.3d 1163 (2000), the Kansas Supreme Court articulated a number of factors a court should consider when determining the kind of sanction to impose:

- "(1) whether the improper conduct was willful or negligent;
- "(2) whether it was part of a pattern of activity or an isolated event;
- "(3) whether it infected the entire pleading or only one particular count or defense;
- "(4) whether the person has engaged in similar conduct in other litigation;
- "(5) whether it was intended to injure;
- "(6) what effect it has on the litigation process in time or expense;
- "(7) whether the responsible person is trained in the law;
- "(8) what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; and
- "(9) what amount is needed to deter similar activity by other litigants."

As previously discussed, the district [*16] court made no factual findings regarding Emerson's conduct. At most, the record would support a finding that Emerson negligently pursued a writ of mandamus when mandamus was not the appropriate procedural vehicle for relief. A court has the inherent power to control its dockets, including reasonable filing restrictions to prevent abusive filing practices. However, the exercise of this power is limited by a litigant's constitutional right to access to the courts. [Holt v. State](#), 290

[Kan. 491, 498, 232 P.3d 848 \(2010\)](#). Blanket prohibitions, against future filings deny a party's access to the courts and exceeds the court's inherent power to control its dockets. [Holt, 290 Kan. at 498, 502-03](#).

The district court's filing restriction contains no provision for indigency or for retroactive payment of the filing fee. See [Smith v. McKune, 31 Kan. App. 2d 984, 990-93, 76 P.3d 1060, rev. denied 277 Kan. 925 \(2003\)](#) (holding that a filing fee imposed upon *in forma pauperis* petitions is constitutionally permissible if provision is made for retroactive debiting of an inmate's account when an inmate cannot provide the funds at the time of filing). Therefore, considering Emerson's indigency, the district [*17] court's sanction is tantamount to a blanket prohibition on future filings in Shawnee County. This sanction is not only unconstitutional but also completely unwarranted by Emerson's conduct in this case. To the extent a sanction was warranted, the district court abused its discretion in restricting Emerson's future filings.

Affirmed in part and reversed in part.

Steckline Communs., Inc. v. Journal Broad. Grp. of Kan., Inc.

Court of Appeals of Kansas

October 5, 2018, Decided

No. 118,456

Reporter

2018 Kan. App. Unpub. LEXIS 763 *; 427 P.3d 1016; 2018 WL 4841078

STECKLINE COMMUNICATIONS, INC., Appellant, v.
JOURNAL BROADCAST GROUP OF KANSAS, INC.,
Appellee.

Notice: NOT DESIGNATED FOR PUBLICATION

PLEASE CONSULT THE KANSAS RULES FOR
CITATION OF UNPUBLISHED OPINIONS.

PUBLISHED IN TABLE FORMAT IN THE PACIFIC
REPORTER.

Prior History: *Steckline Communs. v. Journal Broad. Group of Kan., Inc.*, 353 P.3d 469, 2015 Kan. App. Unpub. LEXIS 531 (Kan. Ct. App., June 26, 2015)

Counsel: [*1] William P. Tretbar and Adam R. Burrus, of Fleeson, Goings, Coulson & Kitch, L.L.C., of Wichita, for appellant.

Jay F. Fowler and Amy S. Lemley, of Foulston Siefkin LLP, of Wichita, for appellee.

Judges: Before GREEN, P.J., PIERRON and BUSER, JJ.

Opinion

MEMORANDUM OPINION

PER CURIAM: This is a summary judgment case involving a contract dispute between two companies in the radio broadcasting industry: the plaintiff, Steckline Communications, Inc. (SCI), and the defendant, Journal Broadcast Group of Kansas, Inc. (JBGK). In 2003, SCI's predecessor-in-interest, Mid-America Ag Network, Inc. (MAAN, Inc.) entered into a written agreement with JBGK to settle prior litigation. Under the agreement, MAAN, Inc. agreed to provide programming for broadcast over a radio station owned by JBGK for a period of 15 years. JBGK agreed to broadcast the programming, as well as the advertising sold by MAAN, Inc. for air during the broadcasts.

In 2005, the written settlement agreement was assigned by MAAN, Inc. to SCI, and SCI began furnishing content to

JBGK under the agreement. In June 2012, JBGK stopped broadcasting the programming and advertising which SCI had by then been providing for seven years. SCI sued JBGK for breach [*2] of the 2003 agreement.

JBGK moved to dismiss SCI's action, asserting that SCI lacked standing because JBGK never consented to the assignment of MAAN, Inc.'s rights. In March 2014, the trial court granted JBGK's motion to dismiss. The trial court based its dismissal of SCI's action on the failure of MAAN, Inc. to obtain JBGK's consent to the assignment of the agreement as required by its terms. The trial court's decision was affirmed by this court but eventually reversed by our Supreme Court in [*Steckline Communications, Inc. v. Journal Broadcast Group of Kansas, Inc.*, 305 Kan. 761, 388 P.3d 84 \(2017\)](#). Our Supreme Court held that SCI had pled facts which, if proven, were sufficient to establish that JBGK was equitably estopped to contest SCI's standing to bring this action. Thus, it remanded this case for further proceedings.

On remand, JBGK moved for summary judgment. The trial court granted JBGK's motion and held that SCI had failed to prove the elements of an equitable estoppel claim. In making its decision, the trial court concluded that SCI's evidence offered to prove that JBGK "knew or should have known" about the assignment was "ambiguous" and, therefore, SCI had failed to properly establish a claim of equitable estoppel.

On appeal, SCI asserts that this case was not ripe for summary [*3] judgment and that the issue of whether JBGK knew or should have known of the assignment to SCI should have been decided at trial. JBGK responds by asserting that SCI failed to establish the elements of equitable estoppel and that the trial court was the proper entity to decide whether SCI had standing to assert a claim for equitable estoppel.

Because there is a disputed issue of material fact and the trial court failed to weigh the evidence in favor of SCI, the nonmoving party, we reverse and remand for trial.

Factual Background

In 1977, Larry Steckline formed Mid America Ag Network

(MAAN) and later created Mid America Ag Network, Inc. (MAAN, Inc.) with the goal of producing market reports and other radio programming for those in the agricultural community. MAAN, Inc.'s principle asset was MAAN.

In 1992, MAAN, Inc.'s board of directors elected Larry's son, Greg Steckline, to replace an existing board member. At that time, the board also appointed Greg to serve as MAAN, Inc.'s vice-president. Greg served as MAAN, Inc.'s vice president and as a minority stockholder until 2005.

In 2003, MAAN and JBGK settled a lawsuit. Larry, as the president of MAAN, and Douglas G. Kiel, vice chairman of [*4] JBGK, executed the settlement agreement on behalf of the parties. SCI was not a party to the settlement agreement. The term of the agreement was 15 years; beginning June 9, 2003, and lasting until June 9, 2018. The agreement provided, "[e]ffective August 1, 2003, this 2003 [a]greement will represent the sole and entire agreement of the parties related to any radio station or other asset of JBGK and its affiliates or to MAAN and its affiliates." Paragraph 14 of the agreement stated:

"Binding Effect; Assignment. This 2003 Agreement shall be binding upon and inure to the benefit of the successors, heirs and assigns of each party, provided, however, that 4

MAAN shall not assign this 2003 Agreement, or any interest therein, to any Wichita radio broadcast competitor of JBGK, without the prior written consent of Douglas G. Kiel or Stephen J. Smith (or their respective successors), which consent may be withheld by them in their sole discretion; and . . . neither party shall assign this 2003 Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld."

Paragraph 16 of the agreement stated: **"Amendment.** This Agreement shall only be amended or [*5] altered through a written agreement signed by an authorized officer of each party. No future course of conduct shall be interpreted to amend or modify the express terms of this 2003 Agreement."

Under the agreement, MAAN agreed to provide programming and content to JBGK for broadcasting on KDFI-FM and KFTI-AM (now known as KLIO-AM). MAAN was entitled to the revenue from the advertising sold during the programming it provided to JBGK. With respect to the content furnished by MAAN, paragraph 4 of the agreement provided:

"Compliance with Federal Communications Commission Requirements. MAAN shall ensure that the programming and commercials it provides . . . complies in all respects with the [Communications Act of](#)

[1934](#), as amended; all rules, regulations and policies of the FCC (collectively, the 'FCC Requirements'); and all standards of acceptance imposed by JBGK uniformly on providers of content or advertisements. If JBGK determines, in its reasonable discretion, that MAAN's programming or commercials do not comply with any of the FCC Requirements or JBGK's standards of acceptance, JBGK shall notify MAAN of its determination. MAAN must promptly and completely correct such issues. MAAN agrees [*6] that it shall not promote in its content or advertisements any . . . information or content which is indecent or offensive under contemporary community standards."

Additionally, paragraph 5B stated: "Each program and commercial unit [provided by MAAN] shall have an audio quality and fidelity at least as good as other programs broadcast by JBGK."

SCI acquired the right to operate MAAN in 2005. At that time, Greg owned and operated SCI. Neither Greg nor SCI owned MAAN, Inc. A document produced by SCI during discovery titled, "Joint Action of Directors and Stockholders by Written Consent in Lieu of Special Meeting," provided that MAAN would "assign all of the rights, property and obligations described on Exhibit A" to a "New Corporation in exchange for all of the issued and outstanding shares of capital stock" in MAAN. MAAN authorized the "New Corporation" to be formed "under the name Steckline Broadcasting, Inc., or under such other name as Gregory Steckline may determine." Exhibit A authorized the assignment of "Business/Advertiser Contract, Contacts, Etc.," as well as "Affiliate Contracts." MAAN never formally informed JBGK of any assignment of rights by MAAN to SCI while JBGK continued [*7] to perform under the 2003 settlement agreement between MAAN and JBGK. Still, SCI maintained that JBGK was aware of the assignment by other means.

After the sale of the MAAN, Inc. assets, Greg asked Larry several times to contact Kiel to help resolve issues that had arisen between KFDI/KFTI and Greg's operating entity. In discussing the particular issues with Kiel, Larry always made clear that he was calling on behalf of Greg, whose company then owned MAAN. Kiel would generally give Larry the name of a JBGK employee that Greg should contact. Larry would then relay the contact information to Greg. Often that contact was Eric McCart, because McCart was the sales manager and, later, the general manager of the KFDI/KFTI stations owned by JBGK.

McCart once contacted Greg asking whether Greg, as owner of the sports radio station KGSO, was going to broadcast all the Kansas State games on that station. Greg declined,

explaining that he could not do so because JBGK had the exclusive contractual right under the 2003 settlement agreement to broadcast that programming over its air for 15 years.

In November 2009, SCI purchased a Wichita radio station known as KQAM-AM 1480. KQAM-AM was an affiliate [*8] of MAAN. News stories reporting the transaction were published by the Wichita Eagle and the Wichita Business Journal on November 16, 2009. The headline of the story published by the Wichita Eagle read: "Steckline buys KQAM 1480." The article referred to SCI and Greg Steckline and MAAN, but did not refer to Larry. The headline of the article published by the Wichita Business Journal read: "Steckline buys Disney Radio Station." Again, the article did not refer to Larry but did refer to SCI, Greg, and MAAN. The trial court, however, stated that the articles did not mention MAAN but the articles do refer to "Mid America chain of networks" and "Mid America Ag News."

In 2010, Larry changed the name of MAAN, Inc. to LS Media, Inc., in part because of the confusion that had arisen from MAAN separating from MAAN, Inc. after the asset sale to SCI.

SCI often communicated with representatives of JBGK by e-mail correspondence. From 2005, when he bought MAAN and the Kansas State inventory, until 2012, Greg frequently e-mailed employees of JBGK at KFDI/KFTI. The e-mails sent by Greg have an automatic signature block with information that he is the president of SCI. The signature block also contains the [*9] MAAN logo, along with logos of four other radio stations owned by SCI.

Even after SCI acquired the right to operate MAAN in 2005, the source of programming provided to KLIO was still identified as MAAN until 2012. Then, an incident occurred on June 29, 2012, in which inappropriate language was broadcast during the time slot provided for MAAN. The parties continue to dispute the unresolved facts of who was responsible for the incident and whether there were other prior ongoing problems between the parties. Following the incident, JBGK stopped broadcasting programming pursuant to the agreement.

Other allegedly problematic content in MAAN's programming (provided by SCI) began in mid-2011 and lasted through June 29, 2012. JBGK documented more than 43 times when the quality of MAAN's content resulted in broadcasted periods of "dead air." During depositions, Greg stated that JBGK "had . . . months and months and months of opportunities to cancel this [contract] due to breach of contract."

On July 10, 2012, JBGK's senior vice president sent a letter to MAAN addressed to Greg requesting that MAAN explain the June 29 problematic broadcast. The letter also gave notice that the problematic broadcast [*10] constituted a breach of the 2003 settlement agreement. Next, on August 2, 2012, following the completion of the respective internal investigations, JBGK sent another letter to MAAN addressed to Kent A. Meyerhoff, one of the attorneys who represented MAAN when it entered into the 2003 settlement agreement. This letter notified MAAN that the problematic broadcast constituted an incurable breach of the 2003 settlement agreement and that JBGK was terminating the agreement. Beginning June 29, 2012, JBGK stopped broadcasting content and advertisements provided by MAAN.

On December 5, 2012, SCI, referring to itself as MAAN's "predecessor-in-interest," sued JBGK to recover damages stemming from JBGK's termination of the settlement agreement. JBGK answered SCI's complaint and asserted a counterclaim against SCI seeking an order from the court requiring SCI to indemnify JBGK for any damages or costs, including attorney fees, it might incur as a result of the June 29 problematic broadcast. SCI answered JBGK's counterclaim, denying responsibility for any act of omission creating an obligation to indemnify JBGK and stating that no statutory or contractual authority existed for JBGK's demand for [*11] attorney fees.

Following the close of discovery and after the parties had submitted an agreed pretrial order, SCI moved for partial summary judgment on the liability portion of its claim against JBGK and on JBGK's counterclaim against SCI. In its supporting memorandum, SCI argued it was entitled to judgment as a matter of law because JBGK breached the settlement agreement when it unilaterally determined that the June 29 problematic broadcast was an incurable breach and terminated the settlement agreement without providing SCI an adequate period of time to cure any shortcomings in its performance. SCI also argued it was entitled to judgment as a matter of law against JBGK's claim for attorney fees because paragraph 12 of the settlement agreement did not apply to SCI's breach of contract claims against JBGK.

On January 21, 2014, JBGK responded to SCI's motion for summary judgment, arguing the problematic broadcast was not correctable and that it had given SCI adequate notice and opportunities to correct any deficiencies in its content over the year preceding JBGK's termination of the settlement agreement. JBGK raised the defense that SCI was not entitled to enforce the settlement agreement [*12] because MAAN did not seek JBGK's consent before MAAN assigned the agreement to SCI in 2005. Finally, JBGK defended its attorney fees claim on the basis that the broad language of

paragraph 12 of the settlement agreement presented a question of fact.

The trial court held a hearing on SCI's motion for summary judgment in January 2014. The trial court denied SCI's motion on the issue of breach of the settlement agreement and granted SCI's motion on the issue of attorney fees. In doing so, the trial court held that SCI lacked standing to sue.

JBGK then moved to dismiss under [K.S.A. 60-212\(b\)\(6\)](#). The trial court held a hearing on the matter. Following oral argument, the court dismissed SCI's claim for lack of standing. The trial court also dismissed the remainder of JBGK's counterclaim for indemnification. As a result, all remaining claims asserted by SCI and JBGK were extinguished. SCI appealed.

This court concluded that SCI had failed to show that MAAN's assignment of rights was valid. [Steckline Communs. v. Journal Broad. Group of Kan., Inc., 353 P.3d 469, 2015 Kan. App. Unpub. LEXIS 531 at *11, 2015 WL 4366489, at *5-6 \(Kan. App. 2015\)](#) (unpublished opinion), *rev'd* [305 Kan. 761, 388 P.3d 84 \(2017\)](#). Thus, this court held that SCI lacked standing to sue under the settlement agreement. SCI filed a petition for review before our Supreme Court, which was granted.

In holding that SCI had established [*13] standing through a claim of equitable estoppel, our Supreme Court stated the following:

"SCI asserted well-pled facts that JBGK, by its silence at the time of the assignment, induced SCI into believing that it had consented to the assignment of the agreement; that JBGK received several years of service from SCI pursuant to the terms of the agreement; that SCI rightfully relied on that course of conduct; and that SCI would be prejudiced or harmed by permitting JBGK to void the agreement by objecting to the assignment 7 years later.

"Viewing the well-pled facts in a light most favorable to SCI, and resolving any factual disputes in SCI's favor, we find that SCI has sufficiently pled standing via equitable estoppel. In other words, if SCI can continue to prove the factual basis of its estoppel claim, JBGK will be prevented from asserting its contractual right to consent in writing to the assignment of the contract. Without the requirement of written consent from JBGK, there is nothing before us today demonstrating that the assignment from MAAN, Inc. to SCI was ineffective, and SCI has standing to assert claims for breach of the contract." [305 Kan. at 771](#).

On remand, JBGK moved for summary judgment. SCI [*14] responded to JBGK's motion and also moved for partial summary judgment in relation to JBGK's defense based on lack of standing. JBGK also filed a reply in support of its motion for summary judgment.

The parties agree, with few exceptions, that the trial court adopted the correct uncontroverted and controverted facts from the parties' filings. The trial court found as follows:

"1. The facts alleged in the Statement of Uncontroverted Facts in Defendant's Memorandum in Support of Summary Judgment in paragraphs 15, 20, 26, 29, 31, 32, 43[,] 51, 52, 53, and 54 are controverted.

"2. The facts alleged in the Statement of Uncontroverted Facts in Defendant's Memorandum in Support of Summary Judgment in paragraphs 1-14, 16, 17, 18, 19, 21, 22, 23, 25, 27, 30, 33-42, 44, 45, 46, 47, 49, 50, 55, 56, 57, 58, and 59 are uncontroverted.

"3. With respect to the facts alleged in paragraph 48 of the Statement of Uncontroverted Facts in Defendant's Memorandum in Support of Summary Judgment, the Court finds that there is no support provided for either contention and the statement will be disregarded for purposes of this motion.

"4. The facts alleged in the Statement of Uncontroverted Facts in Plaintiffs Response [*15] to Motion for Summary Judgment in paragraphs, 64, 76, 78, 86, 90 and 93 are controverted.

"5. The facts alleged in the Statement of Uncontroverted Facts in Plaintiffs Response to Motion for Summary Judgment in paragraphs 60, 61, 62, 65, 66, 68, 69, 70, 71, 75, 77, 79, 80, 81, 82 (which appears twice) 84, 85, 87, 89, 91 and 92 are uncontroverted.

"7. With respect to the facts alleged in paragraph 63 of the Plaintiffs Statement of Additional Uncontroverted Facts the court finds it is uncontroverted the parties communicated by email."

The uncontroverted facts adopted by the trial court come from two documents. Paragraphs 1 through 59 are listed in JBGK's motion for summary judgment. Paragraphs 60 through 92 are listed in SCI's cross-motion for summary judgment. The uncontroverted facts adopted by the trial court are listed as follows:

"1. 'This case is traceable to prior litigation in this District and the settlement agreement that resolved it.' In 1998 the radio station involved in this case, call sign KLIO-AM or KLIO (then KFDI-AM) was owned by JBGK's predecessor in interest, which entered into an affiliation agreement with Mid America Ag Network, Inc.

"2. Pursuant to the 1998 affiliation [*16] agreement, Mid America Ag Network, Inc. (MAAN) furnished KLIO with agricultural market reports and other Mid America Ag Network-produced programming for broadcast. MAAN did not charge the stations a fee for providing the programming. Instead, JBGK's predecessor in interests (which for simplicity's sake will be referred to as JBGK) agreed to broadcast advertising that MAAN sold direct to advertisers for broadcast along with the Mid America Ag Network programming. MAAN retained 100% of the proceeds generated from its ad sales.

"3. In 2002, 'MAAN [was] a company engaged in the business of producing and broadcasting news, sports and weather programs for radio and television stations.'

"4. Disputes between JBGK and MAAN arose.

"5. Under the express language of the 1998 Affiliation Agreement, unless the parties mutually agreed to terminate the contract, there was no date of termination.

"6. One of MAAN's two stockholders (the other being Greg Steckline), and its President in 2002, Lawrence (Larry) Steckline (Greg Steckline's father), testified that in his view, the 1998 Affiliation Agreement was intended to continue into perpetuity and that JBGK could not get out of its obligations under the [*17] 1998 Affiliation Agreement unless he 'agreed to let them out.'

"7. JBGK took the position that the [1998 Affiliation Agreement] was not enforceable, and in 2002 it removed MAAN programming and advertising spots from its broadcasts.

"8. As a result of JBGK's actions, in 2002, MAAN commenced a civil action, *Mid America Ag Network, Inc. v. Journal Broadcast Group of Kansas, Inc.*, District Court of Sedgwick County Case No. 02 C 1528, against JBGK, and JBGK asserted a counterclaim against MAAN in the same proceeding.

"9. At issue in the 2002 litigation, on which JBGK filed a motion for partial summary judgment, was whether the 1998 affiliation agreement was for an indefinite term of duration that would continue in perpetuity and was, therefore, terminable at will under Kansas law.

"10. JBGK's motion for partial summary judgment in the 2002 litigation was denied.

"11. Thereafter, in June of 2003, JBGK settled with MAAN and the terms of that settlement were memorialized in the 2003 Settlement Agreement. The parties to the 2003 Settlement Agreement were JBGK and 'Mid America Ag Network, Inc., a Kansas corporation including all of its related and affiliated persons and entities (including, but not [*18] limited to,

Mid America News Network) (collectively "MAAN").'

"12. The parties entered into the 2003 Settlement Agreement because they wished to enter into a full settlement of the 2002 litigation, and they filed a Journal Entry of Dismissal with prejudice and executed mutual releases.

"13. Steckline Communications, Inc. was not a party to the 2003 Settlement Agreement, and it was not entitled any [sic] benefit from the settlement agreement.

"14. Pursuant to the 2003 Settlement Agreement, MAAN—defined in the agreement to include 'all of its related and affiliated persons and entities' as of 2003—agreed to provide programming and advertising to be broadcast at very specific times over two of JBGK's radio stations, including KLIO's call sign predecessor, KFTI-AM (formerly known as call sign KFDI-AM).

....

"16. Pursuant to the 2003 Settlement Agreement, MAAN was entitled to all revenue resulting from its sale of advertising for broadcast in conjunction with its programming.

"17. MAAN was not required by any provisions of the 2003 Settlement Agreement to purchase or pay for the commercial time it was given under the terms of the 2003 Settlement Agreement.

"18. '[R]adio stations make money [*19] from the sale of advertising.'

"19. JBGK was also obligated by the 2003 Settlement Agreement to make cash payments to Mid America Ag Network, Inc. for four years after the 2003 Settlement Agreement was executed. It was obliged to pay a so-called 'rights fee' for the MAAN programming, 'with \$33,750.00 payable in each of the first four calendar years of this 2003 agreement by January 31 of each year beginning in 2004. Upon payment of the fourth payment in 2008, JBGK shall have a fully-paid-up license for such programming for the remainder of the term.' 13

....

"21. With regard to Mid America Ag Network, Inc.'s ability to assign the 2003 Settlement Agreement, or rights thereunder, the 2003 Settlement Agreement provided:

"'This 2003 Agreement shall be binding upon and inure to the benefit of the successors, heirs and assigns of each party, provided, however that MAAN shall not assign this 2003 Agreement, or any interest therein, to any Wichita radio broadcast competitor of JBGK, without the prior written consent of Douglas G. Kiel or Steven J. Smith (or their respective successors), which consent may be

withheld by them in their sole discretion; and . . . neither party shall assign this [*20] 2003 Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.'

"22. Steckline Communications, Inc. (SCI) is a competitor to JBGK. During the relevant time, it operated two radio stations in the Wichita market, KGSO and KQAM, which compete for advertising and advertising revenue with JBGK.

"23. The benefits JBGK received from the 2003 Settlement Agreement were the dismissal of the 2002 lawsuit and the substitution of the 2003 Agreement for the terms and conditions in the 1998 'perpetual contract.' ('Whereas, the parties are currently in litigation . . . and Whereas, the parties wish to enter into a full settlement of the litigation and clearly define the terms for a new relationship under which they will work together in the future.').

....

"25. JBGK did not receive any of the revenue for the sale of ads accompanying the MAAN programming, or for the sale of air time to MAAN, pursuant to the terms of the 2003 Settlement Agreement.

....

"27. In fact, SCI's control over the times specified in the 2003 Agreement detrimentally impacted the value of KLIO both from a programming standpoint and from the standpoint of JBGK's ability to [*21] compete with MAAN or SCI for advertising revenues.

....

"30. Greg Steckline operates Mid America Ag Network.

....

"33. In the pretrial order, plaintiff admitted that Steckline Communications, Inc. (SCI) now owns and operates the business known by the trade name Mid America Ag Network.

"34. Greg Steckline owns SCI.

"35. Greg Steckline, testifying as a corporate representative (a [K.S.A. 60-230\(b\)\(6\)](#) witness) for SCI testified that Mid America Ag Network is a d/b/a of SCI.

"36. Neither Greg Steckline nor SCI owns Mid America Ag Network, **Inc.**, which still exists; however, its name has been changed to LS Media.

"37. On air, the source of the programming provided to KLIO from 2003-2012 continued to be identified as 'Mid America Ag Network.'

"38. 'Mid America Ag Network, Inc. did not seek or obtain [JBGK's] approval prior to assigning the settlement agreement to SCI's predecessor.'

"39. MAAN was obligated under the 2003 Settlement Agreement to provide programs and commercials with an audio quality and fidelity at least as good as other programs broadcast by JBGK, and to deliver those programs and commercials to JBGK via satellite or ISDN facilities.

"40. MAAN was obligated under the 2003 Settlement Agreement to [*22] provide programs and commercials which complied in all respects with the Communications Act of 1934, as amended; all rules, regulations and policies of the FCC; and all standards of acceptance uniformly imposed by JBGK on its content providers.

"41. MAAN was also obligated under the 2003 Settlement Agreement not to promote in its content or advertisements any content which is indecent or offensive ***under contemporary community standards***.

"42. After notification by JBGK that it determined that MAAN's programming or advertising did not comply with JBGK's acceptance standards, MAAN was obligated under the 2003 Settlement Agreement to 'promptly and completely' correct any noncompliance.

....

"44. The requirement that MAAN shall not promote in its content or advertisements illegal gambling or lotteries, tobacco products, or information or content which is indecent or offensive under ***contemporary community standards*** is set out in a separate sentence of P 4 of the 2003 Settlement Agreement. That sentence comes ***after*** the sentence in the contract that requires MAAN to promptly and completely correct any issue concerning content which does not comply with any of the FCC Requirements, or with JBGK's [*23] uniformly imposed standards of acceptance.

"45. When Greg Steckline was asked about the repeated instances of MAAN's failure to deliver programming with adequate audio quality and fidelity to JBGK before June 29, 2012, he testified as follows:

"Q. [Fowler, attorney for JBGK] Let's talk about some of the issues that you were having. By the way, have you reviewed the e-mail communications from Journal Broadcasting regarding the performance issue?

"A. [Greg Steckline, pursuant to [K.S.A. 60-230\(b\)\(6\)](#)] Yes.

"Q. When did you do that?

"A. **Over the weekend.**

"Q. And I take it you saw that there were repeated instances of failure to deliver signal, correct?

"A. **Most of that was on Mid America Ag**

Network.

"Q. Well, your ability to have access to KLIO was a result of an agreement that related to the Mid America Ag Network, correct?

"A. **Yes.**

"Q. In fact, that's who the agreement was with, Mid America Ag Network, [c]orrect?

"A. **Yes.**

"46. SCI stated in the pretrial order that '**The Mid America Ag Network** produces and distributes news and information programming and market reports, for broadcast.'

"47. In the pretrial order, SCI also stated: 'The radio programming Mid America Ag Network produces and distributes consists primarily [*24] of news and information of interest to listeners involved in agriculture and agribusiness, including farmers, ranchers and businesses that provide goods and services to farmers and ranchers. It also produces and distributes daily market reports as well as general news and sports programming.'

....

"49. When asked about quality failures with the 2-minute Mid Ag report content furnished to KLIO, Steckline defined the Mid Ag report as: 'Programming provided by the Mid America Ag Network.'

"50. After this case was filed, SCI produced a document titled 'Joint Action of Directors and Stockholders by Written Consent in Lieu of Special Meeting Mid-America Ag Network, Inc.,' dated August 4, 2005, which is attached as Exhibit G.

....

"55. The duration of JBGK's obligation to broadcast Mid America Ag Network's programming and advertising, pursuant to the 2003 Settlement Agreement was through June 9, 2018.

"56. There were more than 43 instances between mid-2011 and June 29, 2012 in which JBGK gave MAAN notice of quality and fidelity failures in the content delivered to JBGK's station, KLIO, by Mid America Ag Network.

"57. Many of these 43+ instances were 'dead air' failures.

"58. In the radio industry, [*25] even one instance of a failure to deliver programming that results in 'dead air' is too many:

"Q. [Fowler] How many times is it acceptable not to broadcast, initiate a 6:30 program on time?

"A. [Steckline] **how many times?**

Mr. Tretbar: Object to form.

"A. **Do what?**

"Q. [Fowler] Yeah, how many times is acceptable?

"A. **One.**

"Q. How many times, at least up until Exhibit 42 in the year—less than a year, had you, Mid America Network/Steckline Communications, failed to deliver that program at 6:30?

"A. **Well, I'm finding out there's more than I anticipated or knew of.**

"Q. Quite a few more, apparently?

"A. **Yes.**

....

"Q. How many times did you tell me earlier in the deposition was too many for the failure to deliver a program?

"A. **Say what?**

"Q. How many times did you tell me earlier in the deposition—

Mr. Tretbar: I think he said once, counsel. And you know that he did.

"A. **Yes.**

"Q. [Fowler] One time is too many?

"A. **Absolutely.**

"Q. So this is another of those ones, Exhibit 53?

"A. **Are you being a smart ass?**

"Q. I'm just trying to ask questions, sir.

Mr. Tretbar: Well, then ask a new question.

"Q. [Fowler] how many times are we—

"A. **One.**

"Q. —up to?

All right. One time is too many, correct?

"A. **Correct.**

"Q. All right. [*26] How many times are we up to?

"A. **I have no idea.**

"59. Greg Steckline stated: 'They [JBGK] had, from the looks of it, months and months and months of opportunities to cancel this [contract] due to breach of contract.'"

"60. In November of 2009, SCI purchased a Wichita radio station known as KQAM-AM 1480. News stories reporting the transaction were published by the Wichita Eagle and the Wichita Business Journal on November

16, 2009.

"61. The Wichita Eagle story, published under the headline 'Steckline buys KQAM 1480,' does not refer to Larry Steckline or Mid America Ag Network, Inc. It states in part:

"Steckline Communications has purchased KQAM AM 1480 radio in Wichita from Radio Disney.

"The station . . . will move to the KGSO studios at Maize and Kellogg, owner Greg Steckline said in a news release. The station will carry news, talk, sports and business as the flagship of Steckline's Mid America Ag, news and sports networks . . .

"Steckline owns radio stations in Garden City, Scott City and Guymon, Okla., along with the Mid America chain of networks which provides programming to 37 stations in Kansas, Oklahoma and Nebraska."

"62. The Wichita Business Journal story, published under the [*27] headline 'Steckline buys Disney Radio station,' does not refer to Larry Steckline or Mid America Ag Network, Inc. It states in part: 18

"Steckline Communications Inc. has purchased AM 1480 KQAM radio in Wichita. . . .

"Greg Steckline, president of Steckline Communications, says the company wasn't aggressively looking for new stations. . . .

"Steckline Communications also owns KIUL AM and KGGS AM CP in Garden City, KYUL AM in Scott City and KGYN in Guymon, Okla.

"It also has the Mid America Ag, News and Sports Networks, which provides programming to 37 radio stations in Kansas, Oklahoma and Nebraska."

"63. SCI often communicated with representatives of Journal by means of email correspondence.

....

"65. In May of 2010, Journal voluntarily changed the format of the programming broadcast over KLIO-AM 1070 from 'classic country' to 'oldies.'

"66. As early as 2011, Journal began to consider the possibility of changing the format yet again, to broadcast the programming of ESPN Deportes, which provides Spanish-language sports programming to a network of affiliate broadcasters. It eventually made this switch at some point after the broadcast of the 'Grammar Lesson' audio over its air in June, 2012. [*28]

....

"68. Journal's former general manager acknowledged that programming is essential in broadcasting, and that it would be 'catastrophic' for a radio station to go without programming.

"69. Larry Steckline incorporated Mid America Ag

Network, Inc., ('MAAN, Inc.'), in 1978, in part, to 'conduct and operate a radio and television agricultural reporting network; to broadcast, disseminate, distribute, transmit, retransmit, receive, or collect by electronic, electrical, or other means, farm and agricultural news and markets, commodities, grain and livestock reports and agricultural forecasts. . . .' This reporting network was called the Mid America Ag Network ('MAAN').

"70. To acknowledge the contribution of Greg Steckline to the business, in 1992 the MANN, Inc., Board of Directors elected Greg to replace an existing board member. At that time, Greg was also appointed to serve as Vice-President.

"71. From 1992 until 2005, Greg Steckline was the Vice-President of MAAN, Inc., and a minority shareholder.

"72. The principle asset of MAAN, Inc., was MAAN. MAAN was a contract-based affiliation and relationship between MAAN, Inc., and various radio stations throughout Kansas, Oklahoma, Nebraska [*29] and Colorado that broadcast the MAAN's agricultural-business reports. Another asset of MAAN, Inc., was the exclusive contractual right to broadcast Kansas State University sports programming, which was carried by multiple radio stations. The source of the programming was identified as the Mid America Sports Network.

"73. At one time, approximately fifty affiliated radio stations throughout Kansas, Oklahoma, Nebraska, and Colorado carried MAAN programming, consisting of agricultural and agribusiness reports that featured reporting and commentary by Larry Steckline. These reports attracted a significant audience. In exchange for the MAAN programming, that was provided to the stations at no cost, MAAN had the right to sell a specified number of advertising spots in or near the agricultural reports. All other adjacent spots were sold by the stations to sponsors who found value in having their spots air in close proximity to the agricultural reports. The stations frequently promoted the agricultural reports on their airwaves and that they were members of the Mid America Ag Network, as reasons for sponsors to advertise and listeners to tune in.

"74. In 1991 the National Association of Farm [*30] Broadcasters contracted with a marketing research firm who surveyed Kansans. Eighty-one of the 196 respondents named Larry Steckline as the agricultural broadcaster upon whom they depended regularly for relevant market reports and news. The second most mentioned broadcaster was named by only 17 respondents.

"75. Among the stations affiliated with MAAN were KFDI-FM and KFTI-AM, predecessor stations to those

involved in the current litigation. Approximately three years after the Wisconsin-based Journal Broadcast Group purchased KFDI-FM and KFTI-AM, it attempted to terminate the contracts between the stations and Mid America Ag Network, Inc., that obliged the stations to carry MAAN programming. In 2002, with litigation pending in Sedgwick County District Court, Journal's CEO, Doug Kiehl and Larry Steckline entered into settlement negotiations.

....

"77. Doug [Kiel] and Larry Steckline agreed to the terms of settlement in June 2003. The settlement agreement provided in part that KFTI had the right and obligation to broadcast Kansas State sports programming in the Wichita-metropolitan area subject to certain terms and conditions. Journal had the right to sell eight 30-second advertising [*31] spots during the games and MAAN, Inc., retained the right to sell the remaining advertising.

....

"79. In 2004, MAAN, Inc., sold the Mid America Sports Network and the rights to Kansas State programming to Learfield Communications, Inc., but retained the rights to the advertising inventory in the Wichita-area broadcast during games by affiliate, KFTI.

"80. The sale of MAAN, the Kansas State sports inventory and other the assets of MAAN, Inc., to an entity owned and controlled by Greg Steckline was consummated in May 2005.

"81. In an unrelated transaction, Greg Steckline purchased an AM radio station licensed in Wichita to broadcast sports programming. This station was assigned the call letters 'KGSO.'

"82. After his purchase of KGSO and MAAN, Greg Steckline contacted Eric McCart of Journal to inquire whether he intended to air Kansas State sports programming other than football games that were gratuitously offered by the university, e.g., men's baseball, spring football scrimmage, on KFDI/KFTI. McCart said he did not want to broadcast that programming."

Because of a numbering error, there were two paragraph 82s and no paragraph 83 in SCI's response.

"82. After the sale of the MAAN, Inc., [*32] assets, Greg Steckline asked Larry Steckline on several occasions to contact Doug [Kiel] to assist in resolving issues that had arisen between KFDI/KFTI and Greg Steckline's operating entity. In discussing the particular issue with Mr. [Kiel], Larry Steckline always made clear that he was calling on behalf of Greg, whose company now owned MAAN and the Kansas State sports

inventory. Mr. [Kiel] would generally give Larry Steckline the name of a Journal employee that Greg should contact. Larry Steckline provided Greg with that information.

"84. Frequently, the name given by Mr. [Kiel] to Larry Steckline, which was then relayed to Greg Steckline, was Eric McCart. Mr. McCart was the sales manager and, later, the general manager of the KFDI/KFTI stations owned by Journal. 21

"85. After the sale of MAAN and the Kansas State sports inventory, Eric McCart telephoned Greg Steckline and asked whether Greg, as owner of sports radio station KGSO, was going to broadcast all the K-State games on that station. Greg declined, explaining that he could not do so because Journal had the exclusive contractual right under the 2003 settlement agreement to broadcast that programming over its air for 15 years. [*33]

....

"87. In October 2010, Larry Steckline changed the name of the corporation he established and retained a controlling interest in after most of its assets were sold to SCI from Mid America Ag Network, Inc., to LS Media, Inc. He did this in an effort to diminish confusion that had arisen because MAAN was no longer owned by MAAN, Inc.

"88. From 2005, when he bought MAAN and the K-State inventory, until this litigation commenced in 2012, Greg Steckline frequently emailed employees of Journal at KFDI/KFTI. The emails sent by Greg Steckline have an automatic signature block with information that he is the president of Steckline Communications, Inc. Greg's email signature block also has a logo of the Mid America Ag Network, along with logos of four radio stations (KGSO, KQAM, KGYN and KIUL) owned by Steckline Communications, Inc.

"89. The technologies used by radio stations to receive programming from outside sources, to produce programming internally, and to broadcast programming have evolved. In general, the broadcast of radio programming is much more 'automated' than it was in the earlier years of the industry. Much of the programming broadcast is prerecorded, and fewer employees are [*34] required to see that it is broadcast. For example, Journal typically has only one employee on duty at the facilities from which its six radio stations broadcast simultaneously after six p.m. until the following morning.

....

"91. SCI acknowledges that some of SCI's transmissions of programming and advertising to Journal for broadcast over KLIO-AM did not begin on schedule and/or was

interrupted during the period preceding June 29, 2012, as a result of which KLIO-AM listeners encountered 'dead air' until the transmission of SCI's programming was commenced or restored, or employees of Journal took steps to broadcast alternative programming.

"92. Although SCI believes that some of the problems involving the delivery of the Mid America Ag Network programming were attributable to Journal, it acknowledges that it was responsible for most of them."

In its appellate brief, SCI incorrectly listed facts 24, 28, and 48 as having been adopted by the trial court as uncontroverted facts but the trial court did not accept those facts as uncontroverted. Moreover, the trial court did not address facts 24 or 28, and specifically found that fact 48 should be disregarded for lack of evidentiary support. [*35]

The trial court granted JBGK's motion for summary judgment and held that SCI had failed to establish the elements of an equitable estoppel claim. In making its decision, the trial court concluded that SCI's evidence offered to prove that JBGK "knew or should have known" about the assignment of MAAN's rights under the 2003 settlement agreement was "ambiguous" and, therefore, SCI failed to properly establish a claim of equitable estoppel:

"It is clear from the Supreme Court's prior opinion that equitable estoppel requires the party asserting the doctrine to establish the elements unambiguously, in this case that would include the knowledge of the sale of MAAN to a competitor, SCI in violation of the settlement agreement.

"In this case, SCI is alleging JBGK knew or should have known of the assignment of the settlement by MAAN to SCI. To demonstrate JBGK's knowledge or that they should have known they allege the following:

"1. Reports in local newspaper and periodicals about the sale of MAAN to Greg Steckline;

"2. Statements from Larry Steckline to Doug Kiel, President about the sale of MAAN to his son Greg Steckline and his intent to do so; and

"3. Emails from various persons at SCI to JBGK [*36] regarding the 'dead air' issues.

"However, the deposition of Larry Steckline calls into the question just how clear the actual sale of MAAN to SCI was to JBGK. He testified at his deposition that no details of the transaction regarding the sale of MAAN were divulged to the media. Mr. Steckline testified the press releases only indicated he was selling his interest in MAAN because that was all the media needed to know. He also acknowledged the media release could have caused the media and business world to be under the impression that Greg Steckline bought MAAN. This

does not support the plaintiff[s] theory that JBGK should have known from these releases that SCI, a competitor, actually purchased MAAN.

"The same is true regarding Larry Steckline's statements to Doug Kiel. Mr. Steckline testified in his deposition he only indicated to Mr. Kiel that his son Greg was buying MAAN. No specifics were given about the sale. Without details of the transaction divulged to Mr. Kiel, there could be various interpretations of how the sale was made. This does not support the plaintiff[s] theory that JBGK should have known from these statements to Mr. Kiel that SCI, a competitor, actually purchased [*37] MAAN.

"Finally, SCI alleges the emails sent from Greg Steckline, Brad Streeter, Jay Sanderson and Ron Metzinger should have put JBGK on notice of the sale of MAAN to SCI. The problem with the Plaintiff[s] argument is that even though Steckline Communications was noted in their signature sections, Greg Steckline and Brad Streeter still used the "MAANradio" email address when communicating with personnel at JBGK. Also, Jay Sanderson and Ron Metzinger continued to identify their employment with Mid America Ag Network when communicating with JBGK personnel. The email correspondence does not provide unambiguous evidence that JBGK knew or should have known of the sale to SCI.

"Even taking all the evidence and the deposition of Larry Steckline into the light most favorable to the Plaintiff it is difficult to establish JBGK's knowledge or constructive knowledge of the sale of MAAN to SCI, a competitor in violation of the 2003 settlement agreement between MAAN and JBGK. This is a necessary element to establish SCI's equitable estoppel argument. Therefore the defendant has met its burden and summary judgment is granted on this issue."

Did the Trial Court Err in Granting Summary Judgment?

SCI states [*38] that this court's standard of review is de novo because the trial court denied this issue on summary judgment. SCI also argues that summary judgment was improper because there was a disputed material fact which should have been submitted to a jury. Specifically, SCI argues that a jury should have decided whether JBGK knew or should have known that MAAN assigned its rights under the 2003 settlement agreement to SCI. JBGK responds by asserting that because it is within the trial court's discretion to apply the principles of equitable estoppel, this court's review of the trial court's decision is limited to an abuse of discretion standard. JBGK also argues that SCI failed to prove the

elements of equitable estoppel and summary judgment was, therefore, properly granted.

The parties both correctly detail the standards of review for summary judgment and equitable estoppel. JBGK correctly states that according to this court's decision in *Fleetwood Enterprises v. Coleman Co.*, 37 Kan. App. 2d 850, 161 P.3d 765 (2007), if there are no material facts in dispute, the trial court has discretion whether to invoke the equitable estoppel doctrine. When that is the case, an appellate court's review is limited to an abuse of discretion standard. 37 Kan. App. 2d at 864-65. Still, as SCI points out, on [*39] appeal, this court applies the same rules and when it finds that reasonable minds could differ as to the conclusions drawn from the evidence, summary judgment must be denied. *Armstrong v. Bromley Quarry & Asphalt, Inc.*, 305 Kan. 16, 24, 378 P.3d 1090 (2016). Moreover, equitable estoppel generally involves questions of fact and when the facts are disputed or when necessary facts come from ambiguous documents, summary judgment is inappropriate and the factual dispute must await resolution at trial. *Dunn v. Dunn*, 47 Kan. App. 2d 619, 639, 281 P.3d 540 (2012) (citing *Bowen v. Westerhaus*, 224 Kan. 42, 48, 578 P.2d 1102 [1978]; *Safeway Stores v. Wilson*, 190 Kan. 7, 12, 372 P.2d 551 [1962]).

Summary Judgment

"Summary judgment should not be used to prevent the necessary examination of conflicting testimony and credibility in the crucible of a trial." *Stechschulte v. Jennings*, 297 Kan. 2, 14, 298 P.3d 1083 (2013) (quoting *Esquivel v. Watters*, 286 Kan. 292, 296, 183 P.3d 847 [2008]). Additionally, "[a] court should be cautious in granting a motion for summary judgment when resolution of the dispositive issue necessitates a determination of the state of mind of one or both of the parties." [Citation omitted.] *Foster v. Judilla*, 311 P.3d 415, 2013 Kan. App. Unpub. LEXIS 945 at *14, 2013 WL 5736059, at *5 (Kan. App. 2013) (unpublished decision) (quoting *Brennan v. Kunzle*, 37 Kan. App. 2d 365, 378, 154 P.3d 1094, rev. denied 284 Kan. 945 [2007]).

The standard governing cases that arise on appeal from summary judgment is often recited:

""Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is *no genuine issue as to any material fact* and that the moving [*40] party is entitled to judgment as a matter of law. *The trial court is required to resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the ruling is*

sought. When opposing a motion for summary judgment, an adverse party must come forward with evidence to establish a dispute as to a material fact. In order to preclude summary judgment, the facts subject to the dispute must be material to the conclusive issues in the case. *On appeal, we apply the same rules and where we find reasonable minds could differ as to the conclusions drawn from the evidence, summary judgment must be denied*. [Citations omitted.]"" (Emphases added.) *Armstrong*, 305 Kan. at 24.

The trial court granted JBGK's motion for summary judgment against SCI, precluding its equitable estoppel claim. As explained by our Supreme Court, if SCI had established the elements of equitable estoppel, JBGK would be estopped from making the argument that the contract between MAAN and JBGK didn't allow assignment without consent.

In its motion for summary judgment, JBGK listed the following as an uncontroverted fact:

"28. JBGK was not informed of any assignment of rights by Mid America Ag Network, Inc., [*41] to SCI (or its predecessor company), in 2005 or thereafter, and JBGK was not aware of any assignment at any time while it was performing under the 2003 Settlement Agreement."

In its response to JBGK's motion for summary judgment, SCI stated: "It is uncontroverted that [MAAN, Inc.] did not ask [JBGK] for approval of its plan to assign the Settlement Agreement to SCI's predecessor-in-interest prior to doing so. Controverted to the extent this paragraph asserts that [JBGK] was not aware of the assignment at any time." The trial court did not address whether this fact was uncontroverted, controverted, or immaterial in its memorandum decision. Yet the trial court correctly explained that SCI needed to prove that JBGK knew or should have known MAAN, Inc., assigned its rights under the 2003 settlement agreement to make a claim of equitable estoppel.

Equitable Estoppel

"Equitable estoppel is the effect of the voluntary conduct of a party whereby the party is precluded, both at law and in equity, from asserting rights against another party relying on such conduct." *Petty v. City of El Dorado*, 270 Kan. 847, 853, 19 P.3d 167 (2001). Because "[t]here is no definite rule governing estoppel which can be applied to every situation," each case must be determined on [*42] its own individual facts. *Safeway Stores v. Wilson*, 190 Kan. at 12.

"A party asserting equitable estoppel must show that another party, by its acts, representations, admissions, or silence when it had a duty to speak, induced it to believe

certain facts existed. It must also show it rightfully relied and acted upon such belief and would now be prejudiced if the other party were permitted to deny the existence of such facts. [Citations omitted.]'

....

"The party asserting equitable estoppel will not prevail 'where facts are ambiguous or subject to more than one construction.' *Rockers v. Kansas Turnpike Authority*, 268 Kan. 110, 116, 991 P.2d 889 (1999). Needless to say, equitable estoppel cannot exist if any essential element is missing or is not satisfactorily proved." 305 Kan. at 769-70.

The trial court denied SCI's claim for equitable estoppel based on a lack of proof that JBGK "knew or should have known of the violation of the contract." Specifically, the trial court held that SCI's claim failed because SCI relied on "ambiguous evidence" to prove that JBGK knew or should have known about the assignment.

In support of its factual basis for its estoppel claim, SCI provided the trial court with the following: (1) reports from a local newspaper and periodical about the sale of MAAN, (2) statements from Larry to Kiel [*43] about the sale of MAAN, (3) and e-mails from various persons at SCI to JBGK regarding "dead air" issues. SCI also provided the trial court with evidence that JBGK continued to work with SCI under the terms of the settlement agreement for seven years before it claimed that SCI was not a party to the settlement agreement because the agreement required MAAN to obtain JBGK's permission before assigning its rights under the settlement agreement.

The trial court first addressed the newspaper articles. The newspaper articles submitted to the trial court referred to the sale of KQAM 1480 to "Steckline Communications" and "Steckline Communications, Inc." Both articles also included quotes from Greg. The trial court noted that in Larry's deposition, he testified that he did not provide the media with the specifics of the sale of MAAN. Also, Larry testified that the media may have assumed that the sale was to his son, Greg. From this, the trial court found that this does not support SCI's theory that JBGK should have known from the media releases that SCI, JBGK's competitor, purchased MAAN. Here, although a close question, we conclude that a jury must be allowed to decide this material issue of [*44] fact. Moreover, the trial court did not weigh the evidence in favor of the nonmoving party, SCI. 28

The articles unequivocally show that SCI purchased KQAM, a competitor station to JBGK. The articles also stated that SCI also owned MAAN, "which provide[d] programming to 37 radio stations in Kansas, Oklahoma and Nebraska." While it is

unknown whether JBGK read these articles, the articles unambiguously show that MAAN was owned by a new company. The articles, therefore, provided direct evidence of the sale of MAAN to another party. Moreover, the settlement agreement required JBGK's consent to *any* assignment of the contract, not simply an assignment to a competitor. It would be reasonable to believe that JBGK was put on notice that the settlement agreement had been assigned to SCI because SCI was now providing content to JBGK. This inference is particularly evident when considered with the fact that JBGK continued to work with SCI under the terms of the settlement agreement for at least seven years.

Next, the trial court considered the statements from Larry to Kiel, the then president of JBGK. While the statements did not provide direct notice that MAAN assigned its rights under the 2003 [*45] settlement agreement to SCI, they provided unambiguous proof that MAAN was sold to another entity. In his affidavit, Larry stated that "[w]hile not in writing, [Larry] delivered to [JBGK], via [Kiel], express notice that the assets of MAAN, Inc., would be purchased by an entity owned and controlled by Greg Steckline." This shows that Larry notified Kiel that MAAN, Inc. was selling its assets. Once put on notice of the sale, it would be reasonable that JBGK would investigate if MAAN had assigned its rights under the 2003 settlement agreement to another party in violation of the settlement agreement. The fact that Greg was Larry's son does not supersede the notice or knowledge that another entity would be purchasing MAAN, Inc. assets.

Then, the trial court addressed the e-mails between SCI employees and JBGK employees. The e-mails from various persons at SCI to JBGK regarding "dead air" issues also provided unambiguous proof that JBGK knew or should have known about the assignment. The e-mails included interaction between several different SCI employees and JBGK. Most SCI employees still used "MAANradio" e-mail addresses but also included "Steckline Communications" in their signature [*46] boxes. In particular, Greg's signature box read: "Greg Steckline, President, Steckline Communications, Inc." Greg's signature box also included an SCI logo as well as a MAAN logo. While the continuous e-mail communication evidence by itself was a weak inference that JBGK knew or should have known of the sale and the assignment to SCI, that inference, however, must be drawn by a jury after trial, not by the trial court on summary judgment, where all evidence must be interpreted favorably to the nonmoving party.

Here, because the trial court improperly construed conflicting evidence against the nonmoving party, SCI, we reverse and remand for trial.

Reversed and remanded for trial.

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