

No. 13-110130-A

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**IN THE COURT OF APPEALS OF
THE STATE OF KANSAS**

STATE OF KANSAS
Plaintiff- Appellant

vs.

MILES E. THEURER
Defendant- Appellee

BRIEF OF APPELLANT

Appeal from the District Court of Riley County, Kansas
Honorable John F. Bosch, Judge
District Court Case No. 12 CR 538

Approved

OCT 15 2013

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BY nc S. Ct. Rule 6.10

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**STATE OF KANSAS
Plaintiff- Appellant**

vs.

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Defendant- Appellee**

BRIEF OF APPELLANT

NATURE OF THE CASE

Pursuant to K.S.A. 2011 Supp. 21-6820(d), the State of Kansas appeals the district court's granting of a dispositional departure.

STATEMENT OF THE ISSUE

Issue. Whether the district court's dispositional departure was supported by the evidence in the record and constituted substantial and compelling reasons for a downward dispositional departure.

STATEMENT OF THE FACTS

On the 14th day of April, 2012, just after 2:30 a.m., the Defendant and three passengers were on the way to Manhattan, Kansas after a night of drinking at a strip club in Junction City, Kansas. (R. II, 4). The Defendant was driving a 2003 Chevrolet Silverado thirty minutes after consuming his last beer. *Id.* The Defendant drove his truck into the westbound lane of Fort Riley Boulevard/K-18, heading eastbound just south of the Manhattan Airport, within Riley County, Kansas. (R. II, 3, 12). Ronnie Loggins,

who was driving eastbound in the appropriate lane, observed that the Defendant was in the wrong lane and attempted to get the Defendant's attention by flashing his vehicle's headlights behind the Defendant's vehicle. (R. II, 2, 12). Mr. Loggins caught up to the Defendant and attempted to get the truck to stop by waiving his arms outside of his window at the Defendant. *Id.* At the same time, a 2001 Buick LeSabre, driven by Elizabeth Young, with passenger, Michael Stanley, was traveling westbound in the appropriate lane in the area of 4200 block of Fort Riley Blvd/K-18. (R. II, 3, 12). The Defendant's vehicle struck Elizabeth Young's vehicle in a head on collision. *Id.* Elizabeth Young and Michael Stanley were killed as a result of the wreck. (R. II, 5). The Defendant's blood was tested within 3 hours of driving. (R. II, 4). The results of the blood test were 0.19 grams of ethyl alcohol per 100 milliliters of blood. (R. II, 4).

On the 17th day of September, 2012, the State filed a complaint alleging two counts of Involuntary Manslaughter while Driving Under the Influence of Alcohol, a severity level 4 person felony, in violation of K.S.A. 2011 Supp. 21-5405(a)(3) and K.S.A. 2011 Supp. 8-1567(a)(2) and two counts of Aggravated Battery, a severity level 5 person felony, in violation of K.S.A. 2011 Supp. 21-5413(b)(2)(A). (R. I, 7). On the 5th day of November, 2012, the Defendant waived his right to preliminary hearing and was bound over for district court. (R. I, 21). On the 5th day of May, 2013, the Defendant pled no contest to the two counts of Involuntary Manslaughter while Driving Under the Influence of Alcohol. (R. I, 80). Sentencing occurred on 17th day of June, 2013. *Id.* The Defendant provided the district court with an exhibit containing more than 100 letters from various individuals in a private or professional capacity. (R. IV).

During the sentencing hearing, after the victims' family spoke, the district court found it necessary to read out loud excerpts from several of the recommendation letters before citing the district court's reasons to dispositionally depart. (R. III, 43-50). The district court cited the Defendant's lack of criminal history, diabetic condition, supportive family, employment record, education record, rehabilitative efforts, speaking ability, good character, and letters of recommendation as reasons to grant a dispositional departure from the standard presumptive prison sentence to probation. (R. III, 43-50). The district court stated, "I don't believe any of the factors that I have mentioned, Mr. Theurer, standing alone, would justify a downward departure... but you are an exceptional person that I find to be atypical case. And in this case that, when considering all the facts of your life up to this point, I find that you should be granted a downward departure and that substantial and compelling reasons when considering in all their totality." (R. III, 56). On the 18th day of June, 2013, the State filed its notice of appeal pursuant to K.S.A. 21-6820(d). (R. I, 68).

ARGUMENTS AND AUTHORITIES

Issue. The district court's reasons as a whole were not substantial and compelling reasons justifying its dispositional departure from prison to probation.

Standard of Review

"(1) When the question is whether the record supported a sentencing judge's particular articulated reasons for departure, an appellate court's standard of review is substantial competent evidence; (2) when the question is whether a sentencing judge correctly concluded that particular mitigating factors constituted substantial and compelling reasons to depart in a particular case, including whether those mitigating factors outweighed any aggravating factors if such a balance was necessary, the appellate standard of review is abuse of discretion; (3) when the question is whether a particular mitigating or aggravating factor can ever, as a matter of law, be substantial and compelling in any case, the appellate standard of review

is de novo; and (4) when the challenge focuses on the extent of a durational departure, the appellate standard of review is abuse of discretion, measuring whether the departure is consistent with the purposes of the guidelines and proportionate to the crime severity and the defendant's criminal history.” *State v. Spencer*, 291 Kan. 796, 807-08, 248 P.3d 256 (2011).

In any appeal from a judgment of conviction imposing a sentence that departs from the presumptive sentence prescribed by the sentencing grid for a crime, sentence review shall be limited to whether the sentencing court's findings of fact and reasons justifying a departure: (1) Are supported by the evidence in the record; and (2) constitute substantial and compelling reasons for departure. K.S.A. 21-6820(d).

The issue of whether departure factors are substantial and compelling is reviewed with no deference given to the sentencing court. *State v. Martin*, 285 Kan. 735, 175 P.3d 832 (2008); *State v. McKay*, 271 Kan. 725, 728, 26 P.3d 58 (2001) (citing *State v. Favela*, 259 Kan. 215, 233, 911 P.2d 792 [1996]).

Discussion

The district court did not apply the correct policy standards when considering whether there was substantial and compelling reasons to grant a dispositional departure. Additionally, the district courts reasons as a whole for departure were not substantial and compelling reasons to depart in this case.

a. Intent and Purpose of Guidelines

Before the district court made its findings it quoted K.S.A. 2011 Supp. 21-6601 by stating, “Legislative policy to be followed is to be liberally construed to the end that persons convicted of crimes shall be dealt with in accordance with individual characteristics, circumstances, needs and potentialities as revealed by case studies; that dangerous offenders be correctively treated in custody for long terms as needed; and that other offenders shall be dealt with by probation, suspended sentence, fined or assignment

to a community correctional service program whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the offender.” (R. III, 42). However, the statute quoted by the district court first states, “K.S.A. 21-6601 through 21-6629, and amendments thereto, shall be liberally construed...” K.S.A. 21-6601. The departure statutes do not fall within that range of statutes. K.S.A. 2011 Supp. 21-6801 et seq. To the contrary, K.S.A. 21-6802(a)&(b) states,

“(a) The sentencing guidelines and prosecuting standards, as contained in K.S.A. 21-6801 through 21-6824, and amendments thereto, *shall apply equally to all offenders* in all parts of the state.

(b) The sentencing court may consider in all cases a range of alternatives with gradations of supervisory, supportive and custodial facilities at its disposal so as to permit a sentence appropriate for *each individual case*, consistent with these guidelines and the permitted dispositional and durational departures contained in K.S.A. 21-6801 through 21-6824, and amendments thereto.” (Emphasis added.)

The difference between K.S.A. 21-6601 and K.S.A. 21-6802, is noteworthy because K.S.A. 21-6601 indicates a sentencing court is to liberally construe the sentence to accommodate the individual characteristics of the defendant when giving a sentence, but K.S.A. 21-6802 requires uniformity amongst offenders and indicates a court may consider alternatives for individual cases, not individual characteristics of a defendant.

When enacting the Kansas Sentencing Guidelines Act (KSGA), the legislature determined the standard presumptive sentences, indicated by the guidelines grid formulated according to the severity level of the crime of conviction and the criminal history score of the offender. *State v. Haney*, 34 Kan.App.2d 232, 234, 116 P.3d 747, 751 (2005). The sentence should be imposed by the sentencing court unless the court finds substantial and compelling reasons to depart. *Id.*

The mitigating factors for a sentencing court's consideration for downward departures are listed in K.S.A. 21-6815(c):

- “(1) Subject to the provisions of subsections (c)(3) and (e), the following nonexclusive list of mitigating factors may be considered in determining whether substantial and compelling reasons for a departure exist:
- (A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.
 - (B) The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor may be considered when it is not sufficient as a complete defense.
 - (C) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants, drugs or alcohol does not fall within the purview of this factor.
 - (D) The defendant, or the defendant's children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.
 - (E) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.”

None of the factors listed in K.S.A. 21-6815 apply in this case. The victim was not a participant. (R. II, 1-5). The Defendant played the only role in this offense. *Id.* The Defendant did not lack capacity for judgment when the offense was committed because the Defendant voluntarily consumed alcohol. *Id.* There was no evidence the Defendant suffered from any patterns of abuse. *Id.* The degree of harm was the most severe possible because two people were killed. *Id.* All of the cited factors the sentencing court relied upon to depart were non-statutory factors. (R. III). The State recognizes that sentencing courts may consider other non-statutory factors when imposing a departure sentence as long as there is evidence in the record to support such factors and the use of the factors would be consistent with the intent and purposes of the sentencing guidelines. *State v. Blackmon*, 285 Kan. 719, 721, 176 P.3d 160, 165 (2008);

State v. Tiffany, 267 Kan. 495, 506, 986 P.2d 1064 (1999); *State v. Favela*, 259 Kan. 215, 233–34, 911 P.2d 792, 804-05 (1996).

Further, the mitigating factors listed in K.S.A. 21-6815(c) do not address a defendant’s individual characteristics outside the facts within the case itself. K.S.A. 21-6815(c). Rather, the mitigating factors address circumstances, behaviors, and facts within the case. *Id.* This is noteworthy because it is another example of the legislative intent of what a district court should consider when making its findings at sentencing regarding departures. The district court focused too much attention on the Defendant’s individual characteristics outside the case and neglected the purpose behind the sentencing guidelines in this case where the Defendant’s actions directly caused the deaths of two people.

b. The Reasons For Departure

The district court’s cited reasons for departure were not substantial and compelling and did not justify a dispositional departure from the presumptive prison sentence in this case with two charges of Involuntary Manslaughter while DUI.

“[T]he sentencing judge shall impose the presumptive sentence provided by the sentencing guidelines unless the judge finds substantial and compelling reasons to impose a departure sentence. If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.” K.S.A. 21-6815(a).

‘Substantial’ is defined as “real, not imagined, and of substance, not ephemeral.” *State v. Hines*, 296 Kan. 608, 620, 294 P.3d 270, 278 (2013). ‘Compelling’ is defined as a factor that “must be one which forces the court, *by the facts of the case*, to abandon the

status quo and to venture beyond the sentence that it would ordinarily impose.” *Id.* (emphasis added). Mitigating factors which may in one case justify departure may not in all cases justify departure. *Id.* (citing *State v. McKay*, 271 Kan. 725, 730, 26 P.3d 58 (2001)).

The district court indicated that each factor alone was not sufficient to reach substantial and compelling, but that collectively the factors were substantial and compelling reasons to depart. (R. III, 52-56). It is true that each factor standing alone need not be sufficient to justify the departure if the reasons taken collectively constitute a substantial and compelling basis for departure. *State v. Blackmon*, 285 Kan. at 725; *State v. Ussery*, 34 Kan.App.2d 250, 253, 116 P.3d 735, *rev. denied* (2005) (citing *State v. Minor*, 268 Kan. 292, 311, 997 P.2d 648 [2000]). Nevertheless, under the facts of this specific case, even as a whole, the reasons cited by the district court were not substantial and compelling and did not justify a departure.

Lack of Criminal History

The district court abused its discretion by concluding that the Defendant’s lack of criminal history collectively constituted substantial and compelling reasons to depart in this case because a lack of criminal history does not overcome the fact that the Defendant killed two people as a result of driving a vehicle drunk. Additionally, as a matter of law, a defendant’s lack of criminal history for the offense of Involuntary Manslaughter while DUI should not be a substantial and compelling reason in any case because the KSGA already factors a defendant’s criminal history when assigning the presumption.

The Kansas Supreme Court held that the defendant's lack of criminal history, by itself, is not sufficient to justify a departure sentence, but it “could be considered in the

overall picture.” *State v. Murphy*, 270 Kan. 804, 807, 19 P.3d 80 (2001) (abrogated on other grounds by *State v. Martin*, 285 Kan. at 747). The Defendant’s lack of criminal history was not a substantial and compelling reason to depart, even collectively, given the underlying offenses, the indistinguishable facts involved in this case, and the purposes of the sentencing guidelines. Involuntary Manslaughter while DUI is an unintentional killing. K.S.A. 21-3405(a)(3). Yet, under the KSGA, it is a level four person felony with a prescribed presumptive prison sentence, even with a category “I” criminal history score. K.S.A. 21-6804. The facts of the case are nearly identical to all other cases charged under this offense in Kansas. (R, II, 1-5, 12). Simply put, the Defendant was drunk, driving a vehicle, and as a result two people were killed. *Id.*

The district court noted the State’s argument that the Defendant’s lack of criminal history should not be a substantial and compelling reason to depart, but responded, “But not all criminal history scores ‘I’s’ are the same. There’s absolutely nothing on Mr. Theurer’s record. And a defendant’s complete lack of criminal contacts can be considered in departing.” (R. III, 52). But the district court’s decision is misguided. The criminal history score does not signify that a defendant has never engaged in criminal behavior, but merely that he or she has never been caught and convicted. Thus, the lack of criminal history should not be a reason to depart as a matter of law.

Further, the Defendant’s lack of criminal history should not have been a substantial and compelling reason to depart because the Defendant’s lack of criminal history was already factored in by the sentencing grid, which assigned a presumptive prison box range of thirty-eight months to forty-three months. K.S.A. 21-6804. The legislative intent under this offense was that a defendant would be sentenced to prison,

even when that defendant stands before a sentencing court with no criminal history. *Id.* This court has stated, “[a] defendant’s criminal history cannot be used as justification for a departure sentence when the sentencing guidelines have already taken the defendant’s criminal history into account in determining the presumptive sentence within the grid.” *State v. Richardson*, 20 Kan.App.2d 932, Syl ¶ 2, 901 P.2d 1 (1995). The Kansas Supreme Court noted this argument by the State in *Spencer*, but did not “go the extra step” to address this argument because it had already found the sentencing court’s finding of lack of criminal history as substantial and compelling reason to depart in a Jessica’s Law case was unreasonable given the facts within that case. *State v. Spencer*, 291 Kan. at 817-18. The State contends a district court using lack of criminal history as a reason to depart in an Involuntary Manslaughter while DUI case is unreasonable because of the deaths of the victims in such cases.

The Defendant benefited from having a criminal history score of “I.” Lack of criminal history when two people were killed under such an offense is not something that “forces the court, by the facts in the case, to abandon the status quo and venture beyond that it would ordinarily impose.” Involuntary Manslaughter while DUI is an offense where the legislative intent was that defendants with no criminal history whatsoever should have to serve time in prison, even when it is an unintentional killing. K.S.A. 21-3405; K.S.A. 21-6804.

Further, under the facts in this case, the Defendant’s lack of criminal history cannot overcome the fact that he received two Involuntary Manslaughter convictions. The fact that he had no prior criminal history simply cannot overcome the fact that two people are dead as a result of his actions. Thus, the district court gave weight to the

Defendant's lack of criminal history when it should not have or at the very least gave too much weight to the Defendant's lack of criminal history and neglected the intent and purposes of the sentencing guidelines. Even collectively with other reasons, a lack of criminal history should not have been substantial and compelling.

Diagnosis of Diabetes

The district court cited the Defendant's diagnosis of diabetes as a substantial and compelling reason to depart. (R. III, 53). This was improper under the facts in this case. Further, there was not substantially competent evidence to support the district court's reasons that the Defendant had poor health because of a diagnosis of type 1 diabetes. Additionally, the district court abused its discretion when it found that the Defendant's diagnosis of type 1 diabetes constituted a substantial and compelling reason to depart in this case because his diagnosis of type 1 diabetes would not have been a compelling concern in prison.

First, the statute makes it clear that physical and mental impairments are to be considered if they impact the offender's substantial capacity for judgment when the offense was committed. K.S.A. 21-6815(c)(1)(C). The Defendant's diabetes had no such impact. As such, it was an abuse of discretion for the court to rely on the Defendant's diabetes as a substantial and compelling reason for a departure. See *State v. Spencer*, 291 Kan. 796. (age of the defendant not a proper departure factor when it had nothing to do with the defendant's judgment or lack thereof at the time of the crimes). The mere fact that the Defendant has health issues has no impact on whether the punishment in this case fits the crimes he committed.

Despite the fact that the State provided the district court with reliable evidence to show that the Defendant's diagnosis of diabetes would not be a hardship or concern in prison, the district court cited the Defendant's "poor health" as a collective substantial and compelling reason to depart. (R. III, 12-16, 53). The district court noted that the Defendant's diagnosis "[was not] a sufficient factor [alone], but it is one that can be considered with others." (R. III, 53). The district court further stated, "a defendant's poor health is related to a defendant's amenability to incarceration. ... And here we have an individual who has struggled for years to stabilize his condition that requires constant monitoring, and the legislative policy requires the Court to consider the welfare of the offender." *Id.* However, based on the testimony of the State's witness at sentencing, which was the only evidence presented regarding the care of inmates with a diagnosis of diabetes, the Defendant would be in a better circumstance medically given the medical treatment available to him in the Kansas Department of Corrections (KDOC) facilities. (R. III, 13, 14). The Defendant would not be at any greater risk of having medical issues associated with diabetes while in prison than he would be walking the street. *Id.* There was not substantial competent evidence to support the district court's conclusion that the Defendant had poor health that should prevent him from serving prison time.

The Defendant in no way distinguished himself from any other defendant that on occasion comes before the Court with medical concerns. Having medical issues is not beyond the ordinary or apart from the status quo. *Id.* Having diabetes could hardly be described as something that forces the Court by the facts of the case to be compelled to depart in a case such as this. Especially, when there are hundreds of other inmates in the same condition as the Defendant. *Id.* These medical issues the Defendant indicated were

hardships are issues that KDOC can accommodate and have dealt in the past. *Id.* The district court's use of this diagnosis as a substantial and compelling reason as a whole to depart was unreasonable given the evidence before it.

Rehabilitative Efforts and Speaking Ability

The Defendant's rehabilitative efforts and speaking ability were not substantial and compelling reasons to depart as a whole. A defendant's speaking ability as a matter of law can never be substantial and compelling reason to depart. The district court indicated that the Defendant was not getting into trouble since the incident and his speaking ability was a rehabilitative effort. (R. III, 54). Appropriately, Michael Stanley's father pointed out to the district court that the Defendant speaking to other people would be more effective if he went to prison than if the district court granted probation after the Defendant suggested in his motion to depart and at sentencing, through counsel, he speak to people about his experiences as a punishment. (R. I, 43, 44; R. III, 9, 36). However, the district court found that the Defendant's proposal, "that instead of being in prison for the next three years, that he go out into society to high schools, to colleges, universities, to whoever, and tell them his story, to educate them..." was a reason collectively to depart. (R. III, 54). The district court further explained that the Defendant was an excellent person to speak based on all of the information within the letters of recommendation. *Id.* The State agrees with Mr. Stanley. A court ordered public speaking message coming from a defendant who killed two people and received probation would not be much of a message nor a deterrent to the youth of Kansas regarding the dangers of drinking and driving.

The Defendant being a good speaker had nothing to do with the facts within this case. His speaking ability did not mitigate the killing of two people. No reasonable person would find a defendant's speaking ability was a substantial and compelling reason to depart in a case where two people were killed as a direct result of that defendant's actions.

Employment, Education, and Good Character

The district court cited the Defendant's good employment record, good education record, and good character were substantial and compelling reasons as a whole to grant a dispositional departure. (R. III, 53). However, these factors have absolutely nothing to do with the facts and circumstances within the case. The district court abused its discretion when it found the Defendant's good employment, good education, and good character were substantial and compelling reasons to depart. Whether the Defendant was a good employee, good student, or good person does not mitigate the Defendant's decision to drive a vehicle drunk and kill two people. The district court in its initial comments at sentencing noted that the Defendant, despite all of these attributes, committed this offense when he should have known better. (R. III, 43). The Defendant's employment record, education record, and good character should not have been considered substantial and compelling. No reasonable person would find these reasons in a case such as this compelling.

Supportive Family and Letters of Recommendation

The district court cited the Defendant's supportive family and letters of recommendation as reasons that were collectively substantial and compelling. (R. III, 53). Requests for leniency from a victim or victim's family have been recognized as

reasons for departure. See *State v. Hines*, 296 Kan. 608. The victims' family in this case did not ask for leniency. (R. III. 21-36). Requests for leniency made by the Defendant's family, friends, and colleagues should not force a court to deviate from the status quo in a case such as this. Of course the Defendant's family, friends, and colleagues are going to show their support for the Defendant and request leniency. It would be unusual if they did not.

When presented with a sentencing departure motion, a sentencing court should consider the purposes and principles under which the KSGA was enacted, including (1) the belief that prison space should be reserved for serious or violent offenders; (2) the understanding the extent of sanction for criminal conduct should be based upon the harm inflicted; (3) the desire to create uniformity in the sanctions imposed, irrespective of socioeconomic, racial, or geographic factors; (4) the need for clarity in potential sanctions for specified conduct; (5) the desire to protect the public from serious offenders; (6) the goal of rehabilitation; and (7) the need to allocate public resources efficiently and wisely. *State v. Ussery*, 34 Kan.App.2d at 264 (citing *Favela*, 259 Kan. at 233).

The district court's consideration of the requests for leniency made by the Defendant's family, friends, and colleagues should have been tempered by the degree of harm done to the two victims and victims' family's requests. The Defendant's opportunity filled and affluent life within a well-connected family is evident in the Defendant's 100 plus letters of recommendation. (R. IV). Noteworthy among them was a letter from the Kansas Secretary of Agriculture utilizing official state letterhead. (R. IV, 217-28). The State contends that a defendant with less opportunities, financial support, and socioeconomic status would not have had access to the letters of recommendation. Considering the criminal conduct in this case involved the deaths of two people, no reasonable person would have found the Defendant's supportive family and letters of recommendation were substantial and compelling reasons to depart from

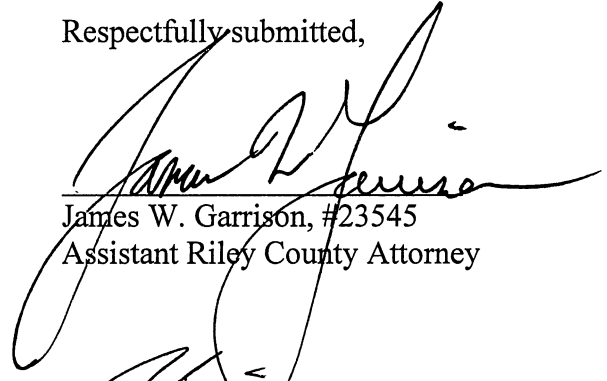
the standard uniform sanction of prison. The departure sentence gives the impression of disparate impact based on socioeconomic status. Therefore, the district court abused its discretion in departing.

CONCLUSION

Finally, even when all of these factors are considered collectively, they do not require a departure in this case. Nothing presented by the Defendant would have forced a reasonable person to depart from the status quo. Given the offenses of Involuntary Manslaughter while DUI and the indistinguishable facts involved in this case where two people were killed, the district court's cited reasons were not substantial and compelling as a whole. Furthermore, the district court's consideration of the cited reasons was not consistent with the intent and purpose of the sentencing guidelines. The facts within the case should have determined whether a departure should have been granted, not whether the defendant outside of the case was a good person, had a good job, did well in school, was a good speaker, or had a supportive network of friends and family. The district court focused too much on the individual characteristics of the Defendant, thus neglecting the degree of harm to the victims and victims' families, which was outside the purpose behind the sentencing guidelines to ensure uniformity in sentencing under the offense of Involuntary Manslaughter while DUI.

The State respectfully requests this court to vacate Theurer's departure sentence and remand for resentencing under the Kansas Sentencing Guidelines.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'James W. Garrison', written over a horizontal line.

James W. Garrison, #23545
Assistant Riley County Attorney

A smaller, stylized handwritten signature in black ink, appearing to read 'Barry R. Wilkerson', written over a horizontal line.

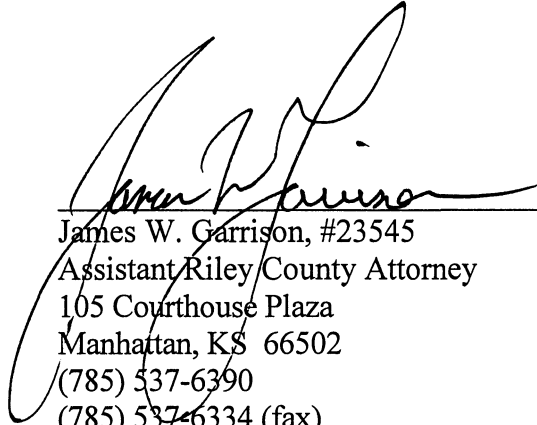
Barry R. Wilkerson, #14727
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Derek Schmidt
Kansas Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies on this 11th day of October 2013, service of the above and foregoing BRIEF OF APPELLANT was made by delivering two (2) true and correct copies to: Pedro Irigonegaray, Attorney at Law, 1535 S.W. 29th Street, Topeka, KS 66611-1901.

I further certify that the original and sixteen (16) true and exact copies of the above and forgoing Brief of Appellant were delivered to: Derek Schmidt, 120 SW 10th, 2nd Floor, Topeka, KS 66612-1597 for filing with Carol G. Green, Clerk of the Appellate Courts, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612.


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