



Kansas Courts News Release

Office of Judicial Administration

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*Judge David Bruns
Court of Appeals*



*Judge Stephen Hill
Court of Appeals*



*Judge Kim Schroeder
Court of Appeals*

Kansas Court of Appeals to hear oral arguments April 18 at Washburn University School of Law

TOPEKA— A three-judge panel of the Kansas Court of Appeals will [hear oral arguments April 18](#) in Robinson Courtroom of Washburn University School of Law in Topeka.

[Judge David Bruns](#) will be joined by Judges [Stephen Hill](#) and [Kim Schroeder](#) to hear oral arguments in six cases. Three will be heard starting at 9:30 a.m. and the remaining three starting at 1:30 p.m.

After each docket session, the judges will be available to answer questions from the public about the court and court procedures.

Bruns, the presiding judge for the panel, said that the Court of Appeals regularly hears cases throughout the state.

"Nearly every month, panels of Court of Appeals judges hear cases in its courtroom in Topeka, and at locations in Wichita and Kansas City," Bruns said. "On occasion, panels will visit other locations, such as Washburn University School of Law, to make the court accessible to more people."

Oral Arguments

Attorneys for each side will have an opportunity to present arguments to the judges, and the judges will have a chance to ask questions. The court will then take each case under consideration and will issue a written decision at a later date, usually within 60 days.

The appeals to be heard arose in Clay, Geary, Riley and Shawnee counties. In addition to the Court of Appeals panel hearing cases this week in Topeka, other three-judge panels of the Court of Appeals will be hearing cases in Overland Park, Wichita and Lawrence. All hearings are open to the public.

There are 14 judges on the Court of Appeals, and the judges sit in three-judge panels to decide cases. In fiscal year 2016, the Court of Appeals resolved appeals in 1,932 cases, including 1,304 in which the court issued a formal written opinion.

The six cases to be heard Tuesday, April 18, at Washburn University are summarized below.

**9:30 a.m.
Tuesday, April 18, 2017**

Case No. 115,609: *State of Kansas v. Anthony Stephen Nichols*

A Riley County jury convicted Nichols of attempted first-degree murder. Prior to his conviction, Nichols filed two motions to suppress that the district court denied. The first motion sought to suppress statements made during an interrogation by law enforcement officers. The second motion sought to suppress evidence found during a search of his cell phone. Nichols appeals the district court's denial of the motions. Nichols argues that the statements he made to law enforcement officers were involuntary because he did not waive his *Miranda* rights and he invoked his right to remain silent. Moreover, Nichols argues that the search of his cell phone was invalid under the United States Supreme Court cases of *Riley v. California* and *United States v. Wurie*.

Case No. 116,322: *Diana Sabatino v. Kansas Employment Security Board of Review*

The Kansas State Fire Marshall's Office terminated Sabatino as an investigator for alleged insubordination related to following agency directives in conducting inspections and preparing reports. Sabatino's application for unemployment benefits was denied and she filed an administrative appeal. While the appeal was pending, the fire marshal modified the alleged reason for Sabatino's termination from insubordination to inefficiency and incompetency. Ultimately, the Board of Review denied Sabatino's appeal. Sabatino then sought judicial review in the Shawnee County District Court. The district court reversed the board's decision. In this appeal, the board raises two issues. First, whether the district court erred by disregarding the appropriate standard of review. Second, whether the modified reason for termination was sufficient to support the board's decision.

Case No. 113,869: *State of Kansas v. Stephen Alan Macomber*

Stephen Macomber was charged in Shawnee County with intentional second-degree murder in the death of Ryan Lofton. After a jury trial convicted him of involuntary manslaughter, Macomber appealed. On appeal, Macomber claims the trial court erred by: 1) giving an instruction on the lesser included offense of involuntary manslaughter; 2) refusing to give instructions regarding his theory of the defense; and 3) denying his claim for immunity based on justification. Macomber also claims there was insufficient evidence to support his conviction for involuntary manslaughter.

**1:30 p.m.
Tuesday, April 18, 2017**

Case No. 115,599: *State of Kansas v. Ulysses Clark*

In Geary County, Clark pled no contest to solicitation to commit first-degree murder, sale of methadone, sale of oxycodone, and perjury. In a previous appeal, a panel of the Kansas Court of Appeals remanded the case to the district court for resentencing. At the resentencing hearing, Clark moved to withdraw his plea. Clark alleged that, had he known the correct maximum sentence possible, he would not have agreed to the plea. The district court denied his motion to withdraw his plea, and Clark appealed. On appeal, Clark raises one issue, and it is whether the district court erred in denying the motion to withdraw his plea.

Case No. 116,307: *Corvias Military Living, LLC, et al. v. Ventamatic, LTD, et al.*

Corvias, LLC, built family housing units in Fort Riley, Kansas. During construction of the residences, Corvias, LLC, purchased bathroom ceiling exhaust fans from subcontractors who installed them in the residences. Subsequently, two of the housing units caught fire resulting in property damage. Shortly after the second fire, Corvias, LLC, replaced the vent fans from the housing units with a different brand of vent fan. Corvias, LLC, then filed a petition in Geary County District Court alleging that the fires were caused by a defect in vent fans manufactured by Ventamatic, LTD, and containing motors made by Jakel, Inc. Ultimately, the district court granted summary judgment motions in favor of Ventamatic, LTD, and Jakel, Inc. On appeal, Corvias, LLC contends that the district court erred in granting summary judgment in favor of Ventamatic, LTD, and Jakel, Inc. Corvias, LLC, argues that the economic loss doctrine involves

a mixed question of fact and law. In addition, Corvias, LLC, alleges that it should be allowed to proceed under an implied warranty theory because the vent fans were inherently dangerous.

Case No. 115,956: *State of Kansas v. Rebecca A. Blackburn*

A police officer stopped a car for an alleged traffic violation. While performing a driver's license check, the officer requested a drug canine be brought to the scene. On arrival, the dog was led around the car and indicated the possible presence drugs. Two items with white residue on them were found in the car — a cut straw and a mirror-like object. Blackburn, who had been driving the car, was arrested along with the other occupants. The officer searched Blackburn and found methamphetamine in her shoe. As a result, Blackburn was charged with possession of methamphetamine in Clay County District Court. Prior to trial, Blackburn filed a motion to suppress the evidence claiming that the officer did not have reasonable suspicion to initiate a traffic stop and did not have probable cause to arrest her. The district court denied the motion to suppress and Blackburn was convicted after a bench trial on stipulated facts. On appeal, Blackburn contends that the district court erred in denying her motion to suppress.

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