



Kansas Courts News Release

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Judge Patrick D. McAnany



Judge Steve Leben



Judge Kim R. Schroeder

Kansas Court of Appeals to hear oral arguments at Johnson County Community College in Overland Park

TOPEKA — A three-judge panel of the Kansas Court of Appeals will hear oral arguments Tuesday, April 17, in the Hudson Auditorium at Johnson County Community College.

Hudson Auditorium is located on the second floor of the Nerman Museum of Contemporary Art at Johnson County Community College, 12345 College Blvd., Overland Park.

Judge Patrick D. McAnany will be joined by Judges Steve Leben and Kim R. Schroeder to hear oral arguments in six cases. Three cases will be heard starting at 9:30 a.m. with 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.

McAnany, the presiding judge for the panel, said the hearings are a sort of homecoming for him.

"Judge Steve Leben and I have long connections to JCCC from our days as district court judges in Johnson County, where we occasionally presented programs for students at the college," he said. "Everyone on our court always look forward to our annual visit to Johnson County Community College to hear cases and interact with the students and faculty."

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.

There are 14 judges on the Court of Appeals, and they sit in panels of three to decide cases. In addition to the panel hearing cases this week in Overland Park, other panels will hear cases at the University of Kansas School of Law, Lawrence; Washburn University School of Law, Topeka; and Newman University, Wichita. All hearings are open to the public.

In fiscal year 2017, the Court of Appeals resolved appeals in 1,833 cases, including 1,265 in which the court issued a formal written opinion.

The six cases to be heard at Johnson County Community College are summarized below. They originate from Johnson and Wyandotte counties.

9:30 a.m. Tuesday, April 17, 2018

Appeal No. 117,725: *Howard Johnson III v. US Food Service and American Zurich Insurance Co.*

Under the state Workers Compensation Act, a worker gives up the right to sue an employer in court for on-the-job-injuries in exchange for the right to make a claim for benefits under the Kansas Workers Compensation Act. In 2015, Johnson injured his neck while working for US Food Service. He applied for workers compensation benefits. He received benefits based on a functional impairment of 6 percent using the 6th Edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, which was the standard adopted by the Legislature in 2015. Before 2015, the Kansas Workers Compensation Act used the 4th Edition of the *Guides*. Under the 4th Edition, Johnson would have received an impairment rating of 25 percent. Johnson argues the statutory change from the 4th Edition to the 6th Edition is unconstitutional because its effect is to diminish or abrogate his right to an adequate remedy under workers compensation law.

Appeal No. 118,165: *City of Leawood v. Robert Puccinelli (Originating in Johnson County)*

Puccinelli was convicted by a jury of driving under the influence. Before trial, he sought to exclude evidence of the results of the field sobriety tests performed before his arrest. He also tried to exclude all references to the horizontal gaze nystagmus test the officer administered as part of the sobriety testing. The district court denied both requests. Issues on appeal include whether: 1) Puccinelli voluntarily consented to the tests; and 2) the reference to the nystagmus test should be allowed without expert testimony on its scientific validity.

Appeal No. 117,326: *State of Kansas v. Jeremy A. Filbert (Originating in Wyandotte County)*

Filbert was charged with two counts of rape, five counts of aggravated criminal sodomy, and one count of aggravated indecent liberties with a minor. The victim in each count was his half-sister, who was under age 14. Filbert was over age 18. At trial, the State dismissed two counts of aggravated criminal sodomy. Filbert requested the district court instruct the jury to decide the case without favoritism or sympathy for or against either him or the victim. The district court declined, and the jury convicted him of the remaining charges. Issues on appeal are whether: 1) the district court erred when it declined to grant Filbert's request; and 2) there was insufficient evidence supporting the convictions for aggravated criminal sodomy.

1:30 p.m. Tuesday, April 17, 2018

Appeal No. 117,198: *State of Kansas v. David Eugene Sisson (Originating in Johnson County)*

Law enforcement stopped Sisson's car for a defective license plate light. The investigating officer suspected Sisson was intoxicated, and Sisson was charged with driving under the influence of alcohol. Before trial, Sisson asked the court to suppress evidence gained during the investigation because the investigating officer did not have reasonable suspicion to stop him. The district court denied Sisson's request and found him guilty of DUI. Sisson appeals.

Appeal No. 117,162: *State of Kansas v. Christopher Michael Dale* (Originating in Johnson County)

Dale was charged and convicted of one count of theft and two counts of aggravated robbery after he used a BB gun to take three cellphones and an iPod from teenagers at a skate park. On appeal, this court affirmed the theft conviction but remanded the case for a new trial on the aggravated robbery charges because of a jury instruction error. Before the second trial, Dale argued the State could not prosecute him for aggravated robbery because he already had been convicted of theft and the two aggravated robbery charges were in violation of the double jeopardy clause of the Fifth Amendment to the U.S. Constitution and Section 10 of the Kansas Constitution Bill of Rights. The district court denied Dale's request and Dale was again convicted of two counts of aggravated robbery. Dale appeals.

Appeal No. 118,090: *Paula Lubberts v. 4 Life Weight Loss Centers Inc., d/b/a Slim4Life* (Originating in Johnson County)

Lubberts sued Slim4Life alleging violations of the Kansas Consumer Protection Act by engaging in deceptive and unconscionable acts and practices in order to convince her to sign up for the Slim4Life weight loss program. Slim4Life filed a motion for summary judgment and alleged Lubberts signed documents requiring her to purchase additional nutritional supplements that were not included in the program's price. The district court ruled in favor of Slim4Life. Lubberts appeals.

Note: Reporters who want to cover the oral arguments using video, photo, or audio recording devices, as spelled out in Supreme Court Rule 1001, should contact Lisa Taylor at taylorl@kscourts.org no later than noon Monday, April 16.

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