



Kansas Courts News Release

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Judge Steve Leben



Judge Henry Green Jr.



Judge Thomas Malone

University of Kansas to host Court of Appeals hearings marking Constitution Day

TOPEKA—A three-judge panel of the Kansas Court of Appeals will hear six cases September 20 at the University of Kansas in Lawrence as part of the court's observance of Constitution Day.

The court will hear cases in two sessions beginning at 9 a.m. and at 1:30 p.m. in Burge Union, 1565 Irving Hill Road.

Judges Steve Leben, Henry Green Jr., and Thomas Malone will hear the cases. Leben is the presiding judge.

"Coming to campus for Constitution Day lets students see how the constitutional rights we all share get explored in real cases," Leben said.

He noted the docket includes three cases involving the Fourth Amendment to the U.S. Constitution, which "gives us all the right to be free from 'unreasonable searches and seizures.' "

"That's a broadly written phrase that must get applied to specific circumstances," Leben said. "On this docket, we'll have three cases considering whether law enforcement officers violated a person's Fourth Amendment rights."

During the panel's sessions, attorneys for each side will have an opportunity to present arguments to the judges, and the judges will have a chance to ask questions. After the hearings, the court will take each case under consideration and will issue a written decision at a later date.

When the oral arguments are complete in the morning and afternoon, the judges will be available to talk with students.

These hearings are part of Constitution Day observance activities this year at Fort Hays State University, the University of Kansas, and Wichita State University. Congress directed federally funded educational institutions to host educational events about the U.S. Constitution on or about September 17 each year. The Constitution was signed September 17, 1787, by a majority of delegates to the Constitutional Convention.

Following are summaries of the cases to be heard by the Court of Appeals panel in Lawrence:

9 a.m. ♦ Thursday, September 20, 2018

Appeal No. 118,809: *In the Matter of the Estate of Chad Allan Fechner*

Geary County: When Fechner died in 2014, he had no will and no living parents or siblings. His maternal aunt, Rita Young, thought she was his only living heir and opened an estate. But a Colorado resident, Gary Fechner, later filed papers claiming he was Chad Fechner's half-uncle. If so, the aunt and the half-uncle would share in the estate. Young asked that Gary Fechner submit to DNA testing, but the district court concluded it didn't have authority to order that testing. Young appealed. Issues on appeal are whether the district court: 1) had the authority to order DNA testing; and 2) abused its discretion by failing to order DNA testing.

Appeal No. 117,802: *State of Kansas v. Nicholas W. Metcalf*

Jackson County: A hotel security officer responding to a noise complaint found a woman who appeared to have been strangled. Police arrived and asked the woman about the man who had been with her. She walked back into the hotel room, and officers followed. They found Metcalf and some drug paraphernalia and marijuana in clothing he had left in the room. While normally a warrant is required to conduct a search, there are several recognized exceptions. The district court found two of them applied here: 1) the woman consented to the officers' entry into the room, and 2) the officers had probable cause to believe domestic battery had been committed and the circumstances required a prompt response. Metcalf appealed, claiming the officers violated his Fourth Amendment rights. Issue on appeal is whether the district court erred when it denied the defendant's motion to suppress the evidence found in the search of the hotel room.

Appeal No. 119,070: *State of Kansas v. Estefania Salazar*

Montgomery County: Salazar was involved in a fatal traffic accident. She told officers they could look for her driver's license in her van. A sheriff's deputy saw a cell phone in the van, picked it up, and looked at text messages on the screen. The district court found this was an illegal search of the phone, found a later search warrant would not have been obtained but for the deputy's observation of the text messages, and ruled no evidence from the phone could be used in the case brought against Salazar for her role in the accident. The State appealed, arguing any impropriety in the initial look at the phone's text messages should be set aside because the officer properly sought a search warrant later. Issue on appeal is whether the district court erred in concluding the events occurring after a deputy initially looked at the cell phone without a warrant did not eliminate any taint from the deputy's initial warrantless search.

1:30 p.m. ♦ Thursday, September 20, 2018

Appeal No. 118,905: *State of Kansas v. Linda Faye Ritchey*

Shawnee County: Ritchey was arrested on an outstanding warrant while she was sitting in the passenger seat of a parked van. After her arrest, police found drug paraphernalia and a baggie with methamphetamine residue in her purse. The district court found the search of her purse without a warrant violated her Fourth Amendment rights. The State appealed, arguing that two exceptions to the warrant requirement applied here: 1) the search was legal because they had arrested the woman, and 2) her purse would have been searched later. Issue on appeal is whether the district court erred when it granted the defendant's motion to suppress evidence found in the search of the purse.

Appeal No. 118,982: *Franklin James Osborn, as Heir at Law of A.O., deceased, vs. Anthony Michael Anderson, et al.*

Bourbon County: Osborn claimed paternity of the child A.O., even though he was not the biological father, and married the child's mother. The marriage was later annulled. After the child's death, Osborn sued the parties he blamed for the death: the child's mother, her boyfriend, and the Kansas Department for Children and Families. The district court concluded the annulment overrode Osborn's earlier paternity acknowledgement and ruled Osborn could not sue the parties he blamed for the child's death. Issue on appeal is whether the district court erred when it granted summary judgment in favor of the defendants even though Osborn signed and filed a voluntary acknowledgement of paternity.

Appeal No. 119,087: *Gary L. Woessner, deceased, vs. Labor Max Staffing and XL Specialty Insurance Co.*

Workers Compensation: Woessner died after a fall at work. When his widow sought workers compensation death benefits, the employer and its insurance company denied the claim under an alcohol and drug use exclusion in the Kansas Workers Compensation Act. A toxicology test ordered during Woessner's hospitalization showed THC, the active chemical in marijuana, in his system. However, the Kansas Workers Compensation Appeals Board concluded the test samples were improperly handled and inadmissible and held the employer and its insurance company liable for death benefits. Issues on appeal are whether: 1) the appeals board erred in finding the drug test results inadmissible; 2) the appeals board should have sent the case back for rehearing at which additional evidence about the testing could have been presented; and 3) the widow presented sufficient evidence to rebut the presumption that her husband was impaired by drugs at the time of the accident.

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