

APPELLATE PROCEDURE OUTLINE



Kansas Supreme Court
and
Court of Appeals

Revised
February 8, 2017

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Introduction

There are two appellate courts in Kansas: the Court of Appeals, which is an intermediate court, and the Supreme Court, which is the highest court in Kansas. Both courts are located in Topeka in the Kansas Judicial Center. The Court of Appeals consists of fourteen judges. A case may be heard *en banc* (before all 14 judges) but normally cases are heard by panels of three judges. The Court of Appeals is a traveling court and may sit in any county in the State. The Supreme Court consists of seven justices. Supreme Court cases are always heard *en banc*. The Supreme Court normally sits at the Judicial Center, but may travel to any county in the State.

The Kansas Supreme Court Rules relating to the Supreme Court, the Court of Appeals, and Appellate Practice are available in the office of the Appellate Court Clerk and on the judicial branch website at www.kscourts.org/rules/. Parties to a case in the appellate courts are bound by the Supreme Court Rules.

You are encouraged to hire a lawyer to help you fill out legal forms. A lawyer will help ensure that the forms are properly completed and that your rights are protected. A lawyer can advise you of issues that you will need to be aware of. A lawyer will also explain what you need to do to represent yourself after you file your forms with the court. You can hire a lawyer to advise you, perform research for you, or to complete only some parts of your case, based on what you can afford to pay.

While court staff can provide information that can be helpful in the handling of your case, court staff cannot provide legal advice. Court staff may:

- Provide information about pro bono and low-cost legal services.
- Provide information about lawyer referral services and lawyer advice lines.
- Provide locations for all court-approved forms and written instructions.
- Provide docketed case information.
- Provide locations for court-approved definitions of commonly used terms.

Court staff may not do any of the following:

- Provide legal advice.
- Recommend a specific course of action.
- Perform legal research for litigants.
- Interpret how the law would apply to a specific situation.
- Predict the outcome of a particular strategy or action.
- Compute deadlines specified by statute or court rules.
- Assist in completing any forms.

The following is a simplified explanation of the basic steps required to appeal a case or to file an original action in the Kansas Appellate Courts. An original action is not an appeal of a lower court's decision; it is a case that begins, or originates, in the appellate court. Once an appeal, or an original action, is filed, the status of the case can be checked online at www.kscourts.org. See “Appellate Case Inquiry System” in the 'FEATURED LINKS' section.

Please find available forms attached to the end of this outline.

(also available on the Judicial Council website at: <http://www.kansasjudicialcouncil.org>)

How to File a Document in the Appellate Courts

A. Attorneys

- Attorneys with a Kansas license in good standing are required to file all documents electronically, through the court's electronic filing system. Supreme Court Rule 1.14(a). To register for e-filing, attorneys must request an account at <https://filer.kscourts.org/>.

B. Pro se parties

- Parties without an attorney are required to file all documents by mailing or delivering paper documents to the Clerk of the Appellate Courts. Supreme Court Rule 1.14(c).
- **All filings must include an original and one copy.**
- Filings must be delivered to the following address:

Douglas T. Shima, Clerk
Appellate Courts of Kansas
Kansas Judicial Center
301 SW 10th Avenue
Topeka, Kansas 66612-1507
- Pro se parties are allowed to fax documents (except for docketing materials and Briefs) that are 10 pages or less, not counting a cover sheet, to the Clerk of the Appellate Courts at (785) 296-1028.

Serving Documents

Regardless of how a document is filed, copies of **all filings must be served on all parties or their attorney. All filings must include a certificate of service.** The certificate of service must list the names and addresses of all parties to the case, unless those parties are represented by attorneys, in which case the names and addresses of the attorneys and the names of the parties they represent must be listed.

An example of the basic format for a certificate of service is:

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Motion to Docket Out of Time was served by United States Mail, postage prepaid, on the 1st day of March, 2017 to:

Jane Doe
Law Firm, LLC
200 S.E. Avenue
Hometown, KS 66603
Attorney for Insurance Company

John Doe
1234 Any Street
Hometown, KS 66603
Appellee

John Q. Smith
John Q. Smith, #22222

I. DOCKETING AN APPEAL

Supreme Court Rule 2.04

Docketing is the process of transferring a case from the lower court to the appellate court. The appellate courts only have jurisdiction over docketed cases. The items needed to docket an appeal are listed below, and more thoroughly explained on pages 8–12. Some of these documents must be certified (items B and C), which means that a district court clerk stamps a seal, that he or she signs and dates, on the document certifying that it is a true and correct copy of the original. Items A–E should be sent together at the same time to the Appellate Court Clerk within 21 days after the Notice of Appeal has been filed in the District Court.

- A. Docketing Statement (if filing pro se, include an original and 1 copy)
- B. Certified copy of the Notice of Appeal
- C. Certified copies of the Journal Entries
 - 1. The final order or decision being appealed
 - 2. Any post-trial motions and rulings (for example: a motion for new trial and the order denying it), in chronological order by date filed
- D. Transcript Request – at least 1 of the following 3 documents is required in order to docket your appeal:
 - 1. A copy of a Request for Transcript that was filed in the District Court
 - 2. A statement that no transcripts will be requested
 - 3. A Certificate of Completion, if a transcript has been requested and completed (the court reporter will prepare this document).
- E. Docketing Fee

If 21 days have already passed since the Notice of Appeal was filed, a Motion to Docket Out of Time must be filed in addition to the above items. If e-filing, the Motion to Docket Out of Time must be uploaded first; the remaining documents must be uploaded in the order listed above.

II. DOCKETING STATEMENT

Supreme Court Rule 2.041

A Docketing Statement is required to docket an appeal. It is not required to docket an original action (original actions are explained on page 23). Available forms are attached to the end of this outline. The Docketing Statement is not the document used to convince the court that the District Court decision should be reversed on appeal – the Brief is where those arguments are presented to the court. The appellate courts use the Docketing Statement to determine if jurisdiction is proper.

- A. Must be on letter size (8½ x 11) paper.
- B. Docketing Statements must follow the format of the sample forms attached at the end of this outline.
- C. May be single spaced.
- D. A certificate of service is required, as the last page of the Docketing Statement.
- E. There should be a concise factual statement. The Docketing Statement is not binding and is not a substitute for the Brief (the Brief is a separate document that presents the case to the appellate court). Parties will have a chance to state all the facts in detail in their Briefs.
- F. There is a separate Docketing Statement for Criminal and Civil cases. Use the appropriate form.
- G. There is a separate Docketing Statement for Civil Cross-Appeals. In general, a cross-appeal is when one party appeals first, but the other party also wants to appeal. The second party would file a Notice of Cross-Appeal in the lower court and file a Cross-Appeal Docketing Statement in the appellate court, along with the other required docketing materials.

III. NOTICE OF APPEAL

Supreme Court Rules 2.01 and 2.02

A Notice of Appeal is filed in the District Court. There are deadlines. It is the appellant's responsibility to ensure that the Notice of Appeal is filed timely. The staff in the Appellate Court Clerk's Office cannot tell parties when their deadline is. After the Notice of Appeal is filed, appellants have 21 days to docket the appeal in the appellate court. The Notice of Appeal that must be included with the docketing materials must have the following (sample forms are attached to the end of this outline):

- A. A legible District Court file stamp.
- B. An original certification signed by a Clerk of the District Court.
- C. A statement identifying which appellate court the appeal is taken – either the Court of Appeals or the Supreme Court.

IV. JOURNAL ENTRIES

Supreme Court Rule 2.04

The docketing materials must include one certified, file-stamped copy of the Journal Entry (or Memorandum Decision) being appealed. If there is more than one Journal Entry, the appellate court requires one certified, file-stamped copy of each. If any motions were filed after trial, the docketing materials must include one certified, file-stamped copy of each motion filed and one certified, file-stamped copy of each ruling on each motion. Common post-trial motions include: Motions for New Trial, Motions for Judgment as a Matter of Law, and Motions to Alter or Amend the Judgment. If filing the docketing materials electronically, the post-trial motions and Journal Entries must be uploaded in chronological order by the file-stamp date. Journal Entries must have the following:

- A. The signature of a District Court judge.
- B. A legible District Court file stamp.
- C. An original certification signed by a Clerk of the District Court.

V. REQUEST FOR TRANSCRIPT
Supreme Court Rule 3.03

It is the duty of the appellant to request a transcript of any trial or hearing which the appellant considers necessary to properly present the appeal. One of the following documents must be filed with the docketing materials:

- A. A file-stamped copy of a Request for Transcript.
 - 1. Appellant must file the Request for Transcript in the District Court within 21 days after filing the Notice of Appeal in the District Court.
 - 2. **The Request for Transcript must include in the title, or in the text, that the request is for an appeal.** This will alert the court reporter to deadlines imposed by Supreme Court Rule 3.03(e), and ensure that the completed transcript is filed in the District Court.
 - 3. A copy of the Request for Transcript **must be served on the court reporter and opposing parties**, and include a certificate of service reflecting that they have been served copies.
- B. A statement that no requests for transcript will be made. This statement is not filed in District Court. It must show service on all the parties to the case.
- C. A Certificate of Completion of transcript(s) if all required transcripts have already been completed. It must show service on all the parties to the case.

NOTE: Jury voir dire, opening statements, and closing arguments of counsel will not be transcribed unless specifically requested within the Request for Transcript.

ATTORNEYS: If requests involving multiple court reporters are made in a single document, upload a copy of the document for EACH court reporter. And remember, court reporters must be served by traditional means – they cannot be served via the notice of electronic filing generated by the e-filing system.

VI. TRANSCRIPTS

Supreme Court Rule 3.03

- A. Payment to the court reporter for preparing the transcript must be made in full within 14 days of the court reporter's Demand for Payment.
- B. The court reporter will not begin preparation of the transcript until he or she receives the estimated cost.
- C. Pro se indigent parties must still pay the court reporter to prepare the transcript. The only exception is when the District Court has issued an Order that the transcript is to be prepared without cost to the appellant.
- D. The court reporter will prepare the transcript within 40 days after receipt of the estimated cost of transcript. Extensions of time may be granted to the court reporter upon showing of good cause.
- E. Upon completion, the transcript is **filed in the District Court** where the parties can view it upon request. A Certificate of Completion will be served by the court reporter on all parties and the Clerk of the Appellate Courts.
- F. Upon receipt of the transcript(s), the District Court Clerk will amend the Table of Contents of the Record on Appeal and send copies of the Amended Table of Contents to the parties. Supreme Court Rule 3.02.
- G. If a party is incarcerated or otherwise cannot go to the district courthouse to view the transcript, a copy may be requested from the District Court Clerk. Parties requesting copies must pay for the copies.

PRACTICE NOTE: If you are unsure which court reporter should be served, contact the District Court Clerk. Rule 354 requires the trial judge to enter on the appearance/trial docket the name of the court reporter taking proceedings. If the proceedings were electronically recorded, service is made on the Clerk of the District Court. Supreme Court Rule 365.

VII. DOCKETING FEE
Supreme Court Rule 2.04

The fee to docket an appeal is \$155 (\$145 and the current \$10 surcharge).

Attorneys:

- If the client is not indigent (and is not a government entity), the docketing fee must be paid through the court's electronic filing system at the time of docketing. The appellate system utilizes Kan Pay, which accepts credit cards and e-checks. (The appellate courts do not use Cite Pay, which is used by most of the district courts in Kansas.)
- If the client is indigent and seeks to have the docketing fee waived, then one of the following must be filed with the docketing materials:
 1. Order of Indigency signed by judge, or
 2. Certification of attorney that appellant was declared indigent in district court and so remains.

Pro se Litigants:

- Litigants who have not been declared indigent are required to pay the fee with cash, check, or money order made payable to the Clerk of the Appellate Courts.
- Indigent litigants seeking to have the docketing fee waived must file one of the following documents with the docketing materials:
 1. An Order from the District Court Judge certifying that:
 - (i) The judge believes the appellant is indigent, and
 - (ii) In the interest of the appellant's right of appeal, an appeal should be docketed *in forma pauperis*.
 2. A Poverty Affidavit that was previously filed in the District Court case in lieu of a fee. (If the District Court allowed the appellant to file a Poverty Affidavit instead of paying a fee, then the appellate court will accept a certified copy of that affidavit in lieu of the docketing fee.)

VIII. ADMINISTRATIVE AND OTHER APPEALS INVOLVING PROCEEDINGS AT MULTIPLE LEVELS

In administrative appeals (and in other appeals involving proceedings at multiple levels, *e.g.* Municipal Court or District Magistrate Judge) under Supreme Court Rule 2.04, the appellant must also file a certified copy of the agency Decision and certified copies of any Petitions for Reconsideration and any rulings thereon. The following list includes documents required in some of those appeals.

A. Administrative Appeals

1. Workers Compensation

See Supreme Court Rule 9.04.

- A. Decision of Administrative Law Judge
- B. Request for Board Review
- C. Board's Order
- D. Petition for Judicial Review to the Court of Appeals

2. Human Rights Commission (formerly Commission on Civil Rights)

- A. Commission's Order
- B. Petition for Reconsideration
- C. Order on Petition for Reconsideration
- D. Petition for Judicial Review to the District Court
- E. Journal Entry from the District Court
- F. Notice of Appeal to the Court of Appeals

3. Board of Tax Appeals (formerly Court of Tax Appeals)

See Supreme Court Rule 9.03

- A. Decision of Board of Tax Appeals
- B. Petition for Reconsideration, if any
- C. Order on Petition for Reconsideration, if any
- D. Request for a Full and Complete Opinion, if any
- E. Petition for Judicial Review (either to the District Court or the Court of Appeals)
- F. Decision of the District Court, if any
- G. Request for Transcript
- H. Request for Certification of Record

4. **Kansas Corporation Commission** (excluding utility rate cases)
 - A. KCC Order
 - B. Petition for Reconsideration
 - C. Order on Petition for Reconsideration
 - D. Petition for Judicial Review to the District Court
 - E. Journal Entry from the District Court
 - F. Notice of Appeal to the Court of Appeals or Supreme Court

5. **Department of Human Resources – Unemployment Benefits**
 - A. Hearing Examiner’s Decision
 - B. Notice of Appeal to Referee
 - C. Referee’s Order
 - D. Notice of Appeal to the Board of Review
 - E. Board of Review’s Order
 - F. Petition for Judicial Review to the District Court
 - G. Journal Entry from the District Court
 - H. Notice of Appeal to the Court of Appeals

6. **Driver’s License Cancellation, Suspension, Revocation, or Denial of License**
 - A. Order of the Division of Motor Vehicles
 - B. Petition for Judicial Review to the District Court
 - C. Journal Entry from the District Court
 - D. Notice of Appeal to the Court of Appeals

7. **Teacher Termination**
 - A. Notice of Nonrenewal or Termination
 - B. Request for Hearing
 - C. Hearing Officer’s Opinion
 - D. Notice of Appeal to the District Court
 - E. Journal Entry from the District Court
 - F. Notice of Appeal to the Court of Appeals

B. Other Appeals

1. Zoning Decisions

- A. Decision of officer administering the provisions of the zoning ordinance or resolution
- B. Appeal to the Board of Zoning Appeals
- C. Board of Zoning Appeals Order
- D. Notice of Appeal to the District Court
- E. Journal Entry from the District Court
- F. Notice of Appeal to the Court of Appeals

OR

- A. Final Decision by city or county
- B. Notice of Appeal to the District Court
- C. Journal Entry from the District Court
- D. Notice of Appeal to the Court of Appeals

2. Municipal Court Decisions

- A. Order of Municipal Court
- B. Notice of Appeal to the District Court
- C. Journal Entry from the District Court
- D. Notice of Appeal to the Court of Appeals

3. District Magistrate Decision (except for decisions from law-trained magistrates, which are appealable directly to the Court of Appeals)

- A. Order of District Magistrate Judge
- B. Notice of Appeal to the District Court
- C. Journal Entry from the District Court
- D. Notice of Appeal to the Court of Appeals

4. Small Claims

- A. Order of Small Claims Court
- B. Notice of Appeal to the District Court
- C. Journal Entry from the District Court
- D. Notice of Appeal to the Court of Appeals

IX. RECORD ON APPEAL
Supreme Court Rule 3.02

- A. The Record on Appeal consists of a portion of the pleadings and documents filed in the lower court case. The appellate courts do not review the entire record made at the lower court—only the Record on Appeal. Supreme Court Rule 3.02(c) lists the documents that are automatically included in the Record on Appeal.
- B. Within 14 days of docketing, the Clerk of the District Court will send to each party a Table of Contents for the Record on Appeal. Inmates: this is the document needed to make proper citations to the Record on Appeal in the Brief.
- C. If a document filed in the lower court case is necessary to the appeal but is not listed in the Table of Contents, then a **Request for Addition to the Record on Appeal must be filed with the District Court Clerk** and served on all parties. A Request for Addition to the Record should be made as early as possible after receiving the Table of Contents.
- D. A *pro se* litigant may review the Record on Appeal at the District Court Clerk's office during the time allotted for writing that party's Brief. If unable to travel to the courthouse, a party will need to use the Table of Contents to determine which volume numbers and page numbers have been assigned to the documents in the Record on Appeal.
- E. Upon completion of the Appellee's Brief, the Appellate Court Clerk will then notify the District Court Clerk to transmit the Record on Appeal to the Clerk of the Appellate Courts.

X. MOTIONS

Supreme Court Rules 5.01 and 5.02

- A. Must be on letter size (8½ x 11) paper.
- B. Must contain only a single subject. In other words, each motion is limited to asking the court to take a single action.
 - 1. If there are two or more arguments or reasons supporting the request that the court take a specific action, those should all be included in one motion (*e.g.* a Motion for Rehearing or Modification alleging multiple errors in the opinion); but
 - 2. If there are requests that the court take two or more different actions, each of those requests must be made in a separate motion (*e.g.* a Motion for Extension of Time to file a Brief and a Motion to Exceed the Page Limits must be separated into two motions).
- C. Must state with particularity the basis or legal ground for the motion.
- D. Must state the specific action the movant is asking the court to take.
- E. Must be signed AND must have a signed certificate of service showing service on all parties to the case or their attorneys.
- F. A party represented by counsel may file a motion on the party's own behalf, *pro se*, only (1) to remove counsel or (2) to file a Supplemental Brief. All motions filed by a party represented by counsel must be served on the party's counsel and all other parties to the appeal.
- G. Motions for Extensions of Time must state:
 - 1. The present due date;
 - 2. The number of extensions previously requested;
 - 3. The amount of additional time needed; and
 - 4. The reason for the request.
- H. A Motion for Extension filed after the due date must state the reasons constituting excusable neglect.

XI. BRIEFS

Supreme Court Rules 6.01, 6.02, 6.03, 6.04, 6.05, 6.06, 6.07 and 6.08

- A. Page limitation for appellant and appellee — 50 pages exclusive of cover, table of contents, appendix, and certificate of service.
- B. Page limitation for Reply Briefs—15 pages.
- C. In both the Supreme Court and the Court of Appeals, oral argument is limited to 15 minutes per side unless additional time is requested by printing “oral argument” on the lower-right portion of the cover of appellant’s brief, followed by 20, 25, or 30 minutes. The appellee will automatically receive the same amount of time. See Rules 7.01(e) and 7.02(f).
- D. Filing date with the Clerk of the Appellate Courts
 - 1. Appellant — 40 days from the date the Docketing Statement was filed or the Motion to Docket Out of Time was granted if no transcript is ordered, or 30 days from date that all transcripts have been filed with the Clerk of the District Court.
 - 2. Appellee — 30 days after service of Appellant’s Brief.
 - 3. Reply — 14 days after service of Appellee's Brief.
- E. The facts included in the statement of facts must be keyed to the Record on Appeal by volume and page number. This means that each fact must be followed by a citation to the Record on Appeal. An example of the format for that citation is: (R. VII, 4-6). The R stands for Record on Appeal. Volume numbers are listed first, in Roman numerals, and page numbers are listed second.
- F. Text must be printed in a font not smaller than 12 point with no more than 12 characters per inch. The suggested size and fonts include 13 point in Times New Roman, Book Antigua, Century Schoolbook, and Palatino Linotype.
- G. Text must be double-spaced. As a guideline, a document with correct font size and spacing will generally have 23 lines of text per page.

XII. BRIEFING CHECKLIST – A sample brief is included at the end of this outline.

This checklist is designed to help a Brief writer comply with the Kansas Supreme Court Rules. It begins at the cover page and moves through the major sections of a Brief. Refer to the sample Brief at the end of this outline. Call the Appellate Court Clerk's office at (785) 296-3229 or email appellateclerk@kscourts.org with any questions.

- Is it unbound? **NO STAPLES, NO SPIRAL BINDING, NO TAPE**
 - Does the following information appear on the cover of the Brief? Rule 6.07(b)(2).
 - The appellate case number [two-digit year in which the case was docketed]-[six-digit case number]-["A" for Court of Appeals or "S" for Supreme court] (Example: 16-116999-A).
 - The words **IN THE COURT OF APPEALS OF THE STATE OF KANSAS OR IN THE SUPREME COURT OF THE STATE OF KANSAS**.
 - The caption of the case as it appeared in the District Court, except that a party must be identified not only as a plaintiff or defendant but also as an appellant or appellee. (Do not reverse the order of the parties based on which party is the appellant.)
 - The title of the document (*e.g.*, Brief of Appellant or Brief of Appellee, *etc.* Identify which appellant, or which appellee, if there is more than one. *E.g.* Brief of Appellants John Smith and Jane Brown).
 - The words Appeal from the District Court of _____ County, Honorable _____, Judge, District Court Case No. _____.
 - The name, address, telephone number, fax number, e-mail address, and attorney registration number of **one** attorney for each party on whose behalf the brief is submitted. An attorney may be shown as being of a named firm.
- **If filed by a pro se, include all information except the attorney registration number. If filed by an inmate, include your inmate number.****

- The words Oral Argument printed on the lower right portion of the Brief cover, followed by the desired amount of time, if additional time for oral argument is requested (*e.g.* Oral Argument 20 Minutes).
- Does the text within the Brief appear in black type on 8½" by 11" white paper? Supreme Court Rule 6.07(a)(1).
- Is the text printed in a conventional style font not smaller than 12 point with no more than 12 characters per inch? (Times New Roman in 12 point does not comply.) Supreme Court Rule 6.07(a)(1).
- Is the text double-spaced, except block quotations and footnotes? Supreme Court Rule 6.07(a)(1).
- Are all margins at least 1 inch? Supreme Court Rule 6.07(a)(1).
- Is only one side of the paper used? Supreme Court Rule 6.07(a)(3).
- Are the pages numbered?
- Is the length of the Brief, excluding the cover, table of contents, appendix, and certificate of service, within the page limitation allowed? Rule 6.07(c).
- Does the Brief contain a Table of Contents that includes page references to each division and subdivision in the Brief, including each issue presented, and the legal authorities relied on in support of each issue? Supreme Court Rule 6.02(a)(1). (The authorities should be listed under the issue statement of the issue they support—they should not be listed separately as a table of authorities.)
- Are the sections of the Brief in the following order?
Nature of the Case; Statement of the Issues; Statement of the Facts; Arguments and Authorities; Conclusion
- Does the Brief, if an Appellant's Brief, contain a concise statement of the nature of the case, *e.g.*, whether it is a personal injury suit, injunction, quiet title, etc., and a brief statement of the nature of the judgment or order from which the appeal was taken? Supreme Court Rule 6.02(a)(2).

- Does the Brief contain a statement, without elaboration, of the issues to be decided in the appeal? Supreme Court Rule 6.02(a)(3).
- Does the Brief contain a concise but complete statement, without argument, of the facts that are material to determining the issues to be decided in the appeal? Supreme Court Rule 6.02(a)(4).
- Are the facts keyed to the Record on Appeal by volume and page number? Supreme Court Rule 6.02(a)(4). (Each fact should be followed by a citation to the Record on Appeal.)
- Have the parties been referred to within the Brief by their status in the district court, *e.g.*, plaintiff, defendant, etc., or by name? (*I.e.*, do not refer to parties simply as appellee or appellant.) Supreme Court Rule 6.08.
- If the appeal involves a child under the code for care of children, a juvenile offender, a party to an adoption proceeding, the victim of a sex crime, or a juror or venire member, have their identities been protected by using initials only or first name and last initial? Supreme Court Rule 7.043.
- Does each issue within the argument section begin with citation to the appropriate standard of appellate review and a pinpoint reference to the location in the Record on Appeal (volume and page number) where the issue was raised and ruled on? Supreme Court Rule 6.02(a)(5).
- Does the appendix, if one is included, consist **only of limited extracts from the Record on Appeal**? (The appendix is not a substitute for the Record on Appeal. Use sparingly.) Supreme Court Rule 6.02(b) and 6.03(b).
- Has the Brief been signed? If filed by a pro se inmate, does the inmate number appear after the inmate's name?
- Is there a certificate of service included as the last page of the Brief? Are all parties served? Is the date and method of service listed in the certificate? Supreme Court Rule 1.11; 6.01(a).

XIII. MOTIONS FOR REHEARING

Supreme Court Rules 7.05 and 7.06

- A. Court of Appeals — Supreme Court Rule 7.05
 - 1. The motion must be filed within 14 days after decision is filed.
 - 2. A copy of the court’s opinion must be attached to the motion.
- B. Supreme Court — Supreme Court Rule 7.06
 - 1. The motion must be filed within 21 days after decision is filed.
 - 2. A copy of the court’s opinion must be attached to the motion.

XIV. PETITIONS FOR REVIEW

Supreme Court Rule 8.03

- A. A Petition for Review is filed in the form of a Brief.
- B. Cannot exceed 15 pages, exclusive of the appendix, cover, certificate of service, and table of contents.
- C. Must be filed within 30 days after the Court of Appeals decision is **filed**. Does not include 3 days for mail time. This 30-day period is **JURISDICTIONAL**. That means the Supreme Court does not have jurisdiction to hear any Petition for Review filed after the 30 days expires.
- D. Must have a copy of the Court of Appeals opinion attached.
- E. The Supreme Court has the discretion to grant or deny the Petition for Review, which means that no party is entitled to review; and the time for ruling on the Petition is entirely within the Supreme Court's discretion.

NOTE: Before filing a Petition for Review, read Supreme Court Rule 8.03 in its entirety.

XV. ORIGINAL ACTIONS

Supreme Court Rule 9.01

A. Petitions for Mandamus and Quo Warranto are filed in the Supreme Court. Petitions for Habeas Corpus may be filed either in the Supreme Court or the Court of Appeals.

B. A Petition for Mandamus or Quo Warranto must be accompanied by:

1. \$155 (docketing fee and current surcharge of \$10);

- Attorneys filing electronically must make electronic payment through the electronic filing system. Pro se litigants can pay by cash, check or money order.

OR

2. If the petitioner is an inmate in the custody of the Department of Corrections:

- a. A Poverty Affidavit, **and**
- b. A statement of the inmate's trust fund account disclosing the average account balance or the total deposits, whichever is less, for the six-month period before the filing of the petition, **and**
- c. A \$3 filing fee;

OR

3. If the petitioner is indigent but is not an inmate—a Poverty Affidavit that includes the source and amount of the petitioner's weekly income.

No docketing fee is required in Habeas Corpus actions.

C. A copy must be served on all respondents or their counsel of record. A certificate showing service on all respondents must accompany the Petition.

MANDAMUS: See also K.S.A. 60-801, *et seq.*

QUO WARRANTO: See also K.S.A. 60-1201, *et seq.*

HABEAS CORPUS: See also K.S.A. 60-1501, *et seq.*

XIV. GENERAL INFORMATION ABOUT COURT-RELATED MATTERS

More detailed information on each of the following subjects is available on the Kansas Judicial Branch website, www.kscourts.org.

Bar Admissions

- Application to take the bar examination
- Application for temporary permit to practice law
- Filing to be a legal intern

Court Reporters

Applications to take the court reporters examination

Attorney Registration

- Payment of annual registration fee
- Information on attorneys in state by county, judicial district, congressional district, and state-wide alphabetical listing
- Online Attorney Directory: www.kscourts.org

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Client Protection Fund Commission

Procedures for filing claims if an attorney has misappropriated a client's money

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**IN THE _____ JUDICIAL DISTRICT
DISTRICT COURT OF _____ COUNTY, KANSAS
(CRIMINAL) (CIVIL) DEPARTMENT**

_____,)
Plaintiff-Appellee,)
vs.) District Court Case Number: _____
) Division Number: _____
)
_____,)
Defendant-Appellant.)

NOTICE OF APPEAL

This party, _____, appeals from this judgment or order, _____, to the Supreme Court of the State of Kansas. This appeal is directly to the Supreme Court on the ground that _____, under this statute: _____.

[Signature]

Name: _____

OR

Attorney's Name and Bar Number

Address:

Telephone Number:

Fax Number:

E-mail address:

Date: _____

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Notice of Appeal was sent by United States Mail, postage prepaid, on the _____ day of _____, 20__ to:

[Signature]

Name: _____

OR

Attorney's Name and Bar Number

**IN THE _____ JUDICIAL DISTRICT
DISTRICT COURT OF _____ COUNTY, KANSAS
(CRIMINAL) (CIVIL) DEPARTMENT**

_____,)
Plaintiff-Appellee,)
vs.) District Court Case Number: _____
) Division Number: _____
)
_____,)
Defendant-Appellant.)

NOTICE OF APPEAL

This party, _____, appeals from this judgment or order,
_____, to the Court of
Appeals of the State of Kansas.

[Signature]

Name: _____

OR

Attorney's Name and Bar Number

Address:

Telephone Number:

Fax Number:

E-mail address:

Date: _____

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Notice of Appeal was sent by United States
Mail, postage prepaid, on the _____ day of _____, 20__ to:

[Signature]

Name: _____

OR

Attorney's Name and Bar Number

**IN THE (SUPREME COURT) (COURT OF APPEALS)
OF THE STATE OF KANSAS**

_____	County Appealed From: _____
Plaintiff,	District Court Case No(s): _____
v.	Proceeding Under Chapter: _____
_____	Party Filing Appeal: _____
Defendant.	Party or Parties Who Will Appear as Appellees: _____

DOCKETING STATEMENT - CIVIL

The docketing statement is used by the court to determine jurisdiction and to make calendar assignments under Rules 7.01(c) and 7.02(c). This is not a brief and should not contain argument or procedural motions.

1. **Civil Classification:** From the list of civil topic sub-types listed at the end of this form, choose the **one** which best describes the **primary** issue in this appeal.

2. **Proceedings in the District Court:**
 - a. Trial judge from whose decision this appeal is taken: _____
 - b. List any other judge who has signed orders or conducted hearings in this matter: _____
 - c. Was this case disposed of in the district court by:
 Jury trial
 Bench trial
 Summary judgment
 Dismissal
 Other
 - d. Length of trial, measured in days (if applicable): _____
 - e. State the name of each court reporter or transcriptionist who has reported or transcribed any or all of the record for the case on appeal. (This is not a substitute for a request for transcript served on the individual reporter or transcriptionist under Rule 3.03.)

f. State the legal name of all entities that are NOT listed in the case caption (including corporations, associations, parent, subsidiary, or affiliate business entities) but are parties or have a direct involvement in the case on appeal:

g. State the name, address, telephone number, fax number, and e-mail address of every attorney who represented a party in district court if that attorney's name does NOT appear on the certificate of service attached to this docketing statement. Clearly identify each party represented.

3. **Jurisdiction:**

a. Date journal entry, judgment form, or other appealable order filed: _____

b. Is the order appealed from a final order, *i.e.*, does it dispose of the action as to all claims by all parties? _____

c. If the order is not a final disposition as to all claims by all parties, did the district court direct the entry of judgment under K.S.A. 60-254(b)? _____
If not, state the basis on which the order is appealable.

d. Date any posttrial motion filed: _____

e. Date disposition of any posttrial motion filed: _____

f. Date notice of appeal filed in district court: _____

g. Other relevant dates necessary to establish this court's jurisdiction to hear the appeal, *i.e.*, decisions of administrative agencies or municipal courts and appeals therefrom:

h. Statutory authority for appeal: _____

i. Are there any proceedings in any other court or administrative agency, state or federal, which might impact this case or this court having jurisdiction (yes or no)? _____
If "yes," identify the court or agency in which the related proceeding is pending. List the case captions and the case or docket numbers.

4. **Constitutional Challenges to Statutes or Ordinances:**
 Was any statute or ordinance found to be unconstitutional by the district court (yes or no)? _____
 If "yes," what statute or ordinance? _____
5. **Related Cases/Prior Appeals:**
- a. Is there any case now pending or about to be filed in the Kansas appellate courts which:
- (1) Arises from substantially the same case as this appeal (yes or no)? _____
 If "yes," give case caption and docket number.
- (2) Involves an issue that is substantially the same as, similar to, or related to an issue in this appeal (yes or no)? _____
 If "yes," give case caption and docket number.
- b. Has there been a prior appeal involving this case or controversy (yes or no)? _____
 If "yes," give case caption and docket number.
-
6. A brief statement (less than one page), without argument, of the material facts. This is not intended to be a substitute for the factual statement that will appear in the Brief.
7. Concise statement of the issues proposed to be raised. You will not be bound by this statement but should include issues now contemplated. Avoid general statements such as "the judgment is not supported by the law."

[Signature]

Name: _____

OR

Attorney's Name and Bar Number

Address:

Telephone Number:

Fax Number:

E-mail address:

Date: _____

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Docketing Statement was sent by United States Mail, postage prepaid, on the _____ day of _____, 20__ to:

[Signature]

Name: _____

OR

Attorney's Name and Bar Number

CIVIL TOPIC SUB-TYPES: Select the **one** sub-type which best describes this appeal. See Question 1 above.

Administrative — KS Corporation Commission	Governmental Immunity
Administrative — Licensing	Habeas — appeal from district court
Administrative — Public Utility Rate Case	Insurance
Administrative — Taxation	Jurisdiction
Administrative — Workers Compensation	Juvenile Offenders Code
Administrative — Other	K.S.A. 60-1507
Certified Question	Libel and Slander
Children — Adoption	Mandamus — appeal from district court
Children — CINC	Negligence
Children — Termination of Parental Rights	Oil and Gas
Conservators/Conservatorships	Personal Property
Constitutional Law	Probate
Contracts	Procedure
Creditors and Debtors	Quo Warranto — appeal from district court
Damages — Personal Injury	Real Property
Damages — Property	Statutory Interpretation or Construction
Damages — Punitive	Teacher Employment/Due Process
Divorce	Torts (specify sub-type)
Election Contest	Wrongful Death
Eminent Domain	Zoning
Employment	Other (please specify): _____

**IN THE (SUPREME COURT) (COURT OF APPEALS)
OF THE STATE OF KANSAS**

_____, County Appealed From: _____
Plaintiff, District Court Case No(s): _____
v. Proceeding Under Chapter: _____
_____, Party Filing Appeal: _____
Defendant. Party or Parties Who Will Appear As
Cross-Appellees: _____

DOCKETING STATEMENT - CIVIL - CROSS-APPEAL

The docketing statement is used by the court to make calendar assignments under Rules 7.01(c) and 7.02(c). This is not a brief and should not contain argument or procedural motions.

1. Date notice of cross-appeal filed in district court: _____
2. A brief statement (less than one page), without argument, of the facts material to the cross-appeal. This is not intended to be a substitute for the factual statement which will appear in the Brief.
3. Concise statement of the issues proposed to be raised. You will not be bound by this statement but should include issues now contemplated. Avoid general statements such as "the judgment is not supported by the law."

[Signature]

Name: _____

OR

Attorney's Name and Bar Number

Address:

Telephone Number:

Fax Number:

E-mail address:

Date: _____

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Docketing Statement was sent by United States Mail, postage prepaid, on the _____ day of _____, 20__ to:

[Signature]

Name: _____

OR

Attorney's Name and Bar Number

**IN THE (SUPREME COURT) (COURT OF APPEALS)
OF THE STATE OF KANSAS**

_____ Plaintiff, v. _____ Defendant.	County Appealed From: _____ District Court Case No(s): _____ Proceeding Under Chapter: _____ Party Filing Appeal: _____ Party or Parties Who Will Appear as Appellees: _____ _____
--	---

DOCKETING STATEMENT - CRIMINAL

The docketing statement is used by the court to determine jurisdiction and to make calendar assignments under Rules 7.01(c) and 7.02(c). This is not a brief and should not contain argument or procedural motions.

1. **Criminal Classification:**
 - a. Conviction of (offense[s], statute[s], and classification[s] of crime[s]): _____
 - b. Date of offense(s) committed: _____

2. **Proceedings in the District Court:**
 - a. Trial judge from whose decision this appeal is taken: _____
 - b. List any other judge who has signed orders or conducted hearings in this matter: _____
 - c. Was this case disposed of in the district court by:
____ Jury trial
____ Bench trial
____ Plea
____ Dismissal
 - d. Length of trial, measured in days (if applicable): _____
 - e. State the name of each court reporter or transcriptionist who has reported or transcribed any or all of the record for the case on appeal. (This is not a substitute for a request for transcript served on the individual reporter or transcriptionist under Rule 3.03.)

 - f. State the name, address, telephone number, fax number, and e-mail address of any attorney who represented a party in the district court if that attorney's name does NOT appear on the certificate of service attached to this docketing statement. Clearly identify each party represented.

3. **Jurisdiction:**

- a. Date sentence was pronounced from the bench: _____
- b. Date notice of appeal filed in district court: _____
- c. Custodial status:
 - (1) Is the defendant subject to appeal bond or incarcerated? _____
 - (2) Earliest possible release date, if incarcerated: _____
If sentencing is challenged on appeal, it is the State's obligation to notify the clerk of the appellate courts in writing of any change in the custodial status of the defendant during the pendency of the appeal. See Rule 2.042.
- d. Statutory authority for appeal: _____
- e. Are there any co-defendants (yes or no): _____
If "yes," what are their names? _____
- f. Are there any proceedings in any other court or administrative agency, state or federal, which might impact this case or this court having jurisdiction (yes or no)? _____
If "yes," identify the court or agency in which the related proceeding is pending. _____
List the case captions and the case or docket numbers. _____

4. **Constitutional Challenges to Statutes or Ordinances:**

- Was any statute or ordinance found to be unconstitutional by the district court (yes or no)? _____
If "yes," what statute or ordinance? _____

5. **Related Cases/Prior Appeals:**

- a. Is there any case now pending or about to be filed in the Kansas appellate courts which:
 - (1) Arises from substantially the same case as this appeal (yes or no)? _____
If "yes," give case caption and docket number. _____
 - (2) Involves an issue that is substantially the same as, similar to, or related to an issue in this appeal (yes or no)? _____

If "yes," give case caption and docket number.

- b. Has there been a prior appeal involving this case
or controversy (yes or no)? _____
If "yes," give caption and docket number. _____
-
6. A brief statement (less than one page), without argument, of the material facts. This is not intended to be a substitute for the factual statement which will appear in the Brief.
7. Concise statement of the issues proposed to be raised. You will not be bound by this statement but should include issues now contemplated. Avoid general statements such as "the judgment is not supported by the law."

[Signature]

Name: _____

OR

Attorney's Name and Bar Number

Address:

Telephone Number:

Fax Number:

E-mail address:

Date: _____

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Docketing Statement was sent by United States Mail, postage prepaid, on the _____ day of _____, 20__ to:

[Signature]

Name: _____

OR

Attorney's Name and Bar Number

IN THE (SUPREME COURT) (COURT OF APPEALS) OF THE STATE OF KANSAS

Case Caption:

Appellate Court Case No.: _____

DOCKETING STATEMENT - ANSWER

The docketing statement is used by the court to determine jurisdiction and to make calendar assignments under Rules 7.01(c) and 7.02(c). The docketing statement and answer are not Briefs.

If the statement of facts and issues in the docketing statement is sufficient, there is no need to file an answer. The answer should not contain argument or procedural motions.

1. A brief statement (less than one page), without argument, of any material facts not set forth in the docketing statement. This is not intended to be a substitute for the factual statement that will appear in the Brief.

2. Concise statement of clarification of any issues set forth in the docketing statement.

[Signature]

Name: _____

OR

Attorney's Name and Bar Number

Address:

Telephone Number:

Fax Number:

E-mail address:

Date: _____

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Docketing Statement Answer was sent by United States Mail, postage prepaid, on the _____ day of _____, 20__ to:

[Signature]

Name: _____

OR

Attorney's Name and Bar Number

Motion to Docket Appeal Out of Time

**IN THE (SUPREME COURT) (COURT OF APPEALS)
OF THE STATE OF KANSAS**

_____))
Plaintiff-Appellant,)
))
vs.) District Court Case Number: _____
))
_____))
Defendant-Appellee.)

MOTION TO DOCKET APPEAL OUT OF TIME

Appellant asks to docket this appeal out of time because _____

_____.

1. *Background.* _____ is the appellant in this case. This is an appeal from _____ (for example: trial, verdict, sentencing, final order) in the District Court of _____ County, Kansas. Notice of Appeal of this matter was filed in that court on _____, 20____. More than 21 days have expired since the filing of the Notice of Appeal.
2. *Authority.* Supreme Court Rule 2.04.
3. *Reasons.* (reasons for the delay listed below)

For these reasons, appellant asks permission to docket the appeal today.

[Signature]

Name: _____

OR

Attorney's Name and Bar Number

Address:

Telephone Number:

Fax Number:

E-mail address:

Date: _____

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Motion to Docket Out of Time was sent by United States Mail, postage prepaid, on the _____ day of _____, 20__ to:

[Signature]

Name: _____

OR

Attorney's Name and Bar Number

IN THE _____ JUDICIAL DISTRICT
DISTRICT COURT OF _____ COUNTY, KANSAS
(CRIMINAL) (CIVIL) DEPARTMENT

_____,)
Plaintiff-Appellee,)
vs.)
_____,)
Defendant-Appellant.)

District Court Case Number: _____
Division Number: _____

REQUEST FOR TRANSCRIPT

This party: _____ asks for the following transcripts to be prepared for the appeal of this case: [insert type of hearing, *e.g.* motion hearing, jury trial, sentencing, *etc.*]

1. Transcript of _____ on _____, 20__ through _____, 20__.
2. Transcript of _____ on _____, 20__ through _____, 20__.
3. Transcript of _____ on _____, 20__ through _____, 20__.
4. Transcript of _____ on _____, 20__ through _____, 20__.
5. *Authority.* Supreme Court Rule 3.03.

[Signature]

Name: _____

OR

Attorney's Name and Bar Number

Address:

Telephone Number:

Fax Number:

E-mail address:

Date: _____

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Request for Transcript was sent by United States Mail, postage prepaid, on the _____ day of _____, 20__ to:

[Signature]

Name: _____

OR

Attorney's Name and Bar Number

IN THE SUPREME COURT OF THE STATE OF KANSAS

_____,
Plaintiff,

vs.

Case No. _____

_____,
Defendant.

POVERTY AFFIDAVIT

I, _____, am unable to pay the full amount of the docket fee in this matter by reason of poverty. Pursuant to K.S.A. 60-2001(b)(2), the following information is provided in support.

Employment: I am ___ employed; ___ not employed.

My employer is:

My employer's address is:

Income: I receive income from the following other sources (**list amount per week**):

Employment income (after withholdings) is: \$ _____

Rental income: \$ _____

Interest and / or dividends: \$ _____

Spousal support and / or child support: \$ _____

Retirement, pension, social security: \$ _____

Disability, workers compensation: \$ _____

Unemployment benefits: \$ _____

Other Income (Describe) \$ _____

TOTAL weekly income from all sources: \$ _____

Assets on Hand: I presently have the following assets (list value):

Cash (including bank accounts, prison accounts, and electronic accounts): \$ _____
Automobile, truck or other vehicle: \$ _____
Real property (home, building or land): \$ _____
Other assets (jewelry, watches, etc.): \$ _____

Other Assets: Are you a beneficiary of any current estate, trust, annuity, or life insurance policy? If so, please provide the details.

Other Reasons: Explain any other facts or reasons why you cannot afford to pay the full amount of the docket fee in your case.

I, _____, (inmate number, if any _____) declare under penalty of perjury that the information set forth in this affidavit is true and correct and that, by reason of my poverty, I am unable to pay the full amount of the docket fee.

Executed on _____, 20____.

Signature of Appellant

Printed Name of Appellant

Notarial Certificate

State of _____
County of _____

I hereby certify that the above named person appeared before me, his or her identify was verified, and the signature above was executed in my presence on the date listed above.

Signature of Notary Public

My commission expires on: _____

[SEAL]

NOTE: If you are an inmate in the custody of the Department of Corrections, you must attach to this affidavit a certified inmate account statement setting forth the lesser of the average account balance or total deposits in your inmate trust fund for the 6-month period preceding the filing of this affidavit or the current period of incarceration, whichever is shorter.

No. 17-111234-A

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

—————
STATE OF KANSAS
Plaintiff-Appellee

vs.

JOHN DOE
Defendant-Appellant

—————
BRIEF OF APPELLANT JOHN DOE

—————
Appeal from the District Court of Shawnee County, Kansas
Honorable Sally Smith, Judge
District Court Case No. 16 CR 0001

—————
John Doe, #22222
Lansing Correctional Facility
PO Box 2
Lansing, KS 66043

Appellant, pro se

Oral Argument 15 minutes

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Nature of the Case

A jury found John Doe guilty of two counts of aggravated robbery, a severity level three person felony; one count of aggravated battery, a severity level four person felony; and one count of aggravated assault, a severity level seven person felony. The district court imposed a controlling 112-month prison sentence, and Mr. Doe appealed.

Statement of Issues

Issue I: The State failed to present sufficient evidence to convict Mr. Doe of aggravated robbery because the taking was complete before the force or threat of bodily harm occurred.

Issue II: Mr. Doe's two convictions for aggravated robbery are multiplicitous, and violate the Fifth and Fourteenth Amendments to the United States Constitution and § 10 of the Kansas Constitution Bill of Rights.

Statement of Facts

Based on the events of June 14, 2009, the State charged John Doe with two counts of aggravated robbery and one count each of aggravated battery, aggravated assault, and possession of drug paraphernalia. (R. I, 15-16.)

At trial, Mack Jones, the Store Manager at Store, in Kansas, testified that Mr. Doe had entered his store at approximately 10:30 P.M. on June 14, 2009. (R. XIII, 341-42.) Due to Mr. Doe's suspicious behavior, Jones began to watch Mr. Doe. (R. XIII, 343.) Eventually, Jones saw Mr. Doe "place a magazine down the front of his pants," and then "walk through the front of the store past the checkstands and out the door." (R. XIII, 344.)

Jones then confronted Mr. Doe outside the store, and asked him “to come back into the store to talk about merchandise that was not paid for.” (R. XIII, 345-46.) Mr. Doe “turned around,” and acted as if he were returning to the store, but then stabbed Jones in the stomach with a knife, pointed the knife at a cashier, and fled the parking lot. (R. XIII, 329-30, 333-34, 348-49.)

At no point during his testimony did Jones mention what happened to the magazine, which had a cover price of \$5.99. (R. XII, 152, 192, R. XIII, 325; State’s Exhibit 5.) According to the cashier’s testimony, however, Mr. Doe had handed the magazine to Jones before the struggle, and the magazine had then “flown” out of Jones’ hands and back into the store, where police found it when they arrived. (R. XX, 149.)

After the State rested its case, defense counsel moved for a directed verdict, arguing that, because the use of force or threat of bodily harm to Jones and the cashier had not occurred until after Mr. Doe had already taken, and, in fact, returned the magazine, the State had presented insufficient evidence to allow a rational factfinder to convict him of either of the counts of aggravated robbery. (R. XIII, 366.) The district court ruled that it was “up to the jury to determine the fact[s],” and overruled defense counsel’s motion. (R. XIII, 374.) Defense counsel also argued that the evidence could only support one conviction for aggravated robbery, because there was “only one owner involved, that being the store, not the employees.” (R. XIII, 375.)

The jury ultimately found Mr. Doe guilty of two counts of aggravated robbery and one count each of aggravated battery and aggravated assault. Neither party requested the district court to poll the jury; nor did the district court ask the jury if the verdicts the district court had read were, in fact, the jury's verdicts. (R. XIII, 460.) Based on Mr. Doe's criminal history score of "I," the district court imposed a controlling 112-month prison sentence. (R. XIV, 28.) Mr. Doe appealed. (R. I, 68.)

Arguments and Authorities

Issue I: The State failed to present sufficient evidence to convict Mr. Doe of aggravated robbery because the taking was complete before the force or threat of bodily harm occurred.

Standards of Review and Preservation of the Issue

"[W]hen sufficiency of the evidence is challenged following conviction in a criminal case," this Court asks "whether, after reviewing all the evidence, viewed in a light most favorable to the prosecution," this Court is "convinced a rational factfinder could have found the defendant guilty beyond a reasonable doubt." *State v. Martinez*, 290 Kan. 992, 1003, 236 P.3d 481 (2010) (citing *State v. Gant*, 288 Kan. 76, 83, 201 P.3d 673 [2009]). To the extent this issue involves a question of statutory interpretation, however, this Court has unlimited review. *State v. Henning*, 289 Kan. 136, 139, 209 P.3d 711 (2009).

Analysis

In order to prove that Mr. Doe was guilty of the aggravated robbery of Jones and the cashier, the State had to prove, among other things, that any taking “was by force or by threat of bodily harm.” (R. 7, 8, 16; R. XIII, 425.) K.S.A. 21-3427; P.I.K. Crim. 3d 56.31. In other words, the State not only had to prove that a taking occurred and that, at some point, Mr. Doe used force or threat of bodily harm; it also had to prove that Mr. Doe took the property *by* force or threat of bodily harm, *i.e.*, that the force or threat of bodily harm was a “causative factor” of the taking. See *State v. Finch*, 223 Kan. 398, 402-03, 573 P.2d 1048 (1978) (suggesting the term “by” is “synonymous with” the term “by means of.”)

In order to prove that Mr. Doe took the magazine from Jones *by* force or threat of bodily harm, therefore, the State had to prove that Mr. Doe used that force or threat of bodily harm as a *means* of taking the property. Such an interpretation is consistent with the plain language of the statute. Even if this Court disagrees, however, it must at least acknowledge that the language of the statute is ambiguous, and interpret that ambiguity strictly in favor of Mr. Doe. *State v. Knight*, 44 Kan. App. 2d 666, 681, 241 P.3d 120 (2010).

Such an interpretation of K.S.A. 21-3427 is also consistent with our Supreme Court’s holding in *State v. Aldershof*, 220 Kan. 798, Syl. ¶ 1, 556 P.2d 371 (1976).

In that case, the woman immediately ran after the defendant, followed him to the parking lot, and managed to grab him on the back of his shirt. He then turned and struck her in the eye with his hand. A jury convicted him of robbery. *Aldershof*, 220 Kan. at 799.

Issue II: Mr. Doe’s two convictions for aggravated robbery are multiplicitous, and violate the Fifth and Fourteenth Amendments to the United States Constitution and § 10 of the Kansas Constitution Bill of Rights.

Standard of Review and Preservation of the Issue

Defense counsel raised this issue below. (R. XIII, 375.) Moreover, this Court “may consider a multiplicity issue for the first time on appeal ‘to serve the ends of justice or prevent a denial of fundamental rights.’” *State v. Colston*, 290 Kan. 952, 971, 235 P.3d 1234 (2010). Finally, this Court has unlimited review over the question of whether two convictions are multiplicitous. *State v. Schoonover*, 281 Kan. 453, 462, 133 P.3d 48 (2006).

Analysis

In *Schoonover*, the Kansas Supreme Court “provided a roadmap for determination of multiplicity issues.” *State v. Gomez*, 36 Kan. App. 2d 664, 669, 143 P.3d 92 (2006).

In order to determine if convictions are multiplicitous, a Court must determine whether the convictions are for the same offense. Convictions are for the same offense if they (1) arise from the same conduct, and (2) constitute only one offense by statutory definition.

Convictions do not arise from the same conduct if the conduct is “discrete, *i.e.*, committed separately and severally.” If, however, the charges arise from the same act or transaction, then the conduct is unitary, and the convictions do arise from the same conduct. Under such circumstances, a reviewing Court must next determine whether the convictions are for violations of the same statute, or two or more different statutes. If the former is true, the Court must apply the “unit of prosecution test”; if the latter is true, then the Court applies the “same-elements” test. *Gomez*, 36 Kan. App. 2d at 669 (citing *Schoonover*, 281 Kan. at Syl. ¶ 15).

In *Pham*, our Supreme Court considered whether the defendant’s six convictions for aggravated robbery were multiplicitous. *Pham*, 281 Kan. at 1233. The Court noted that it was “unclear from the statute . . . whether the legislature intended for all six family members to be claimed as victims for the robbery of jewelry (a) belonging to only two and (b) taken from the bedroom of a third who was holding the jewelry for safekeeping.” Similarly, it is “unclear from the statute . . . whether the legislature intended for” both Drew and Jones “to be claimed as victims for the robbery of” a magazine that belonged to neither of them. “In the absence of clear legislative intent, the rule of lenity presumes a single physical action harming multiple victims is only one offense.” *Pham*, 281 Kan. at 1248.

Conclusion

For the aforementioned reasons, Mr. Doe respectfully requests that this Court (1) reverse one of his aggravated robbery convictions as multiplicitous; (2) reverse his remaining aggravated robbery conviction for insufficient evidence and remand it to the district court with directions to resentence Mr. Doe for misdemeanor theft or for attempted aggravated robbery; and (3) reverse his remaining convictions and remand for a new trial.

Respectfully submitted,

John Doe

John Doe, #22222
Lansing Correctional Facility
PO Box 2
Lansing, KS 66043

Certificate of Service

The undersigned hereby certifies that the foregoing Brief of Appellant was served via U.S. Mail, postage prepaid to Jane Smith, District Attorney, 200 SE 7th Street, Topeka, KS 66603 and one copy to John Jones, Attorney General, 120 SW 10th Ave., Topeka, KS 66612 on the 5th day of January, 2017.

John Doe

John Doe, #22222