RECENT DECISIONS AND HOT ISSUES: CRIMINAL CASES

Cases: October 1, 2024-October 3, 2025

The following are summaries of case highlights from opinions filed in the last 12 months by the Kansas Supreme Court or the Kansas Court of Appeals. They have been prepared by staff attorneys for the two courts and are not to be used as an authoritative reference regarding the cases described. Only the portion of each case related to the topic noted is discussed. You are encouraged to read the entire case before relying upon it.

The effect of a petition for review: Pending determination of the Supreme Court on a petition for review and during the time in which a petition for review may be filed, an opinion of the Court of Appeals is not binding on the parties or on the district courts. If a petition for review is granted, the decision or opinion of the Court of Appeals has no force or effect, and the mandate will not issue until disposition of the appeal on review. If review is denied, the decision of the Court of Appeals is final as of the date of the denial. A denial of a petition for review expresses no opinion of the Supreme Court on the merits of the case. See Kan. Sup. Ct. R. 8.03

AFFIRMATIVE DEFENSE

SELF-DEFENSE IMMUNITY. Richard Riggins was convicted of voluntary manslaughter for killing Dana Haynes. Riggins sought immunity from prosecution. At the immunity hearing the State failed to present any evidence, but the district court relied on testimony from the preliminary hearing and denied the motion for immunity. The Court of Appeals held the district court erred by relying on prior testimony to deny Riggins' motion. Unless the parties stipulate to the use of prior evidence, the district court's ruling on a motion for immunity from prosecution must be based on the evidence presented at the immunity hearing.

> *State of Kansas v. Richard Wayne Riggins*, __ Kan. App. 2d __, ___ P.3d ___, 2025 WL 2630031, 126,841 (Sept. 12, 2025).

APPEALS

NOTICE OF RIGHT TO APPEAL. To invoke a jurisdictional exception to the filing of an out-of-time appeal, the defendant must first establish he or she did not receive full notice of appeal rights. After doing so, the burden shifts to the State to show that the defendant had actual knowledge of that information. If the State fails in its burden, the burden

shifts back to the defendant to establish he or she would have taken a timely appeal if properly informed.

State v. Collins, 320 Kan. 211, 564 P.3d 393 (Feb. 28, 2025).

CHARGING DOCUMENTS

CONSOLIDATION. Separate crimes may be considered part of a common scheme or plan when they are related together in some way. The crimes need not necessarily be in close temporal proximity with each other, nor do they need to be part of one discrete event, so long as they are somehow connected together in pursuit of a common goal. This may include a broader goal, such as to "manipulate and control the women" in a defendant's home.

State v. Ross, 320 Kan. 448, 570 P.3d 28 (Jun. 13, 2025).

MID-TRIAL AMENDMENT. A two-part analysis determines whether an amendment to the charging document prior to submission of the case to the jury may be permitted: (1) Does the amendment charge an additional or different crime? (2) Are the substantial rights of the defendant prejudiced by the amendment? In a matter of first impression, the Kansas Supreme Court held that a district court's error in allowing an amendment is subject to harmless error analysis, disapproving of previous caselaw suggesting that harmless error was not applicable.

State v. Smith, 320 Kan. 62, 563 P.3d 697 (Feb. 14, 2025).

CONSTITUTIONALITY

STANDING—VAGUENESS. An arbitrary-enforcement challenge under the void-for-vagueness doctrine rests on separation-of-powers principles. Because the Constitution reserves to the legislature the power to define crimes, a statute lacking adequate enforcement guidelines impermissibly delegates that core legislative function to police, prosecutors, and judges. Arbitrary-enforcement challenges are inherently facial because they dispute a legislature's authority to enact the statute at all.

State v. Stubbs, 320 Kan. 568, 570 P.3d 1209 (Jun. 27, 2025).

VAGUENESS—RAPE BY FORCE OR FEAR. The statute defining rape when the victim is overcome by force or fear, is not rendered unconstitutionally vague by the subjective nature of the victim's state of mind or by subsection (e), which prohibits the accused from defending based on lack of knowledge of the victim's subjective state of mind. The

statute gives fair notice of the prohibited conduct and articulates definite and precise standards capable of fair application, which necessarily guards against arbitrary interpretation and enforcement of the law.

State v. Ninh, 320 Kan. 477, 570 P.3d 1169 (Jun. 27, 2025).

RIGHT TO BEAR ARMS. Maurice Antonio Hall was convicted of criminal possession of a firearm by a convicted felon. On appeal, he argued that the statute of conviction was unconstitutional on its face and as applied under Section 4 of the Kansas Constitution Bill of Rights. The Court of Appeals affirmed the conviction, holding that Section 4 is not absolute and is subject to narrow limitations advancing compelling governmental interests.

State v. Hall, 65 Kan. App. 2d 369, 564 P.3d 786 (Feb. 14, 2025), *petition for rev. filed* (Mar. 14, 2025), *petition for rev denied* (Jun. 27, 2025).

DRIVING UNDER THE INFLUENCE

SEARCHES AND SEIZURES; ILLEGAL SENTENCE. A jury convicted Jesse Hicks of DUI and child endangerment. On appeal, Hicks challenged the length of the traffic stop and subsequent questioning by the officer. The State cross-appealed the sentence, arguing that a special sentencing rule applied because the DUI was committed with a child in the car. The Court of Appeals found no error in the district court's suppression ruling and affirmed the conviction but vacated the sentence and remanded the case for resentencing because the enhancement for the presence of a child could not be served by a defendant on probation.

State of Kansas v. Jesse Lydell Hicks, __ Kan. App. 2d __, __ P.3d __, 2025 WL 2486479, 126,734 (August 29, 2025), *petition for rev. filed* (Sept. 8, 2025).

DUE PROCESS

TRAFFICKING IN CONTRABAND Quentin Lawton was convicted of trafficking in contraband in a correctional institution after he was found with a form of synthetic cannabinoid inside the Shawnee County Jail. Lawton argued on appeal that the State did not prove that he had fair notice that the synthetic cannabinoid he possessed was contraband inside the jail. The panel held that the fact that it is illegal to possess a substance in Kansas

is sufficient, as a matter of law, to provide fair notice that it is also illegal to possess that substance inside a correctional institution.

> *State v. Lawton*, 65 Kan. App. 2d 749, 571 P.3d 1, 2025 WL 1717473, 126,789 (June 20, 2025), *petition for rev. filed* (Jul. 21, 2025).

RESPONSES TO JURY QUESTIONS. Cornelius Sisson was convicted of criminal threat and harassment by telecommunication device under an aiding and abetting theory introduced by the court's response to a jury question. The Court of Appeals panel held introducing a new theory of culpability mid-deliberation violated due process, further concluding the error required reversal of Sisson's convictions because the panel was firmly convinced the jury would not have asked the question if it believed Sisson was guilty as a principal.

> *State of Kansas v. Cornelius Sisson*, 65 Kan. App. 2d 469, 567 P.3d 258 (Mar. 28, 2025).

ELEMENTS OF CRIMES

ROMEO & JULIET STATUTES. Kansas' Romeo and Juliet statutes reduce the punishment in certain factual situations when an offender under the age of 19 is involved in teenage sexting. The statutes include a definition of "sexually explicit conduct" that does not include mere nudity and is narrower than that contained in the generally applicable definition for sexual exploitation of a child. Courts err when they apply the broader definition to determine the applicability of the Romeo and Juliet statutes.

> *State v. Grant*, 320 Kan. 835, 572 P.3d 788 (Jul. 25, 2025).

ATTEMPT. When a statute defining a crime expressly includes "attempt" as part of the crime, the general attempt statute—K.S.A. 21-4302(a)—does not apply. But when no such language exists, the general statute acts as the default rule to prosecute someone for attempting that crime.

> *State v. Gomez*, 320 Kan. 3, 561 P.3d 908 (Jan. 10, 2025).

AGGRAVATED ROBBERY. When the property taken is a vehicle, an aggravated robbery conviction can be supported by a showing that the driver or any passengers would have remained in possession or control of the vehicle but for being overcome by violence or intimidation.

> *State v. Mendez*, 319 Kan. 718, 559 P.3d 792 (Nov. 27, 2024).

THEFT AFTER PRIOR CONVICTIONS. Angelene Calvert was convicted of felony theft based on her two prior theft convictions within the last five years. On appeal,

Calvert argued that the conviction should be reversed because the State did not prove the fact of her prior convictions to the jury. The Court of Appeals confirmed the conviction, holding that the two prior convictions were not elements of conviction and that the district court could find the date of a prior conviction under an exception set out in *Apprendi*.

> *State v. Calvert*, 65 Kan. App. 2d 301, 564 P.3d 814 (Jan. 31, 2025), *petition for rev. filed* (Mar. 3, 2025), *petition for rev. granted* (May 21, 2025).

PRIVACY, IDENTICAL OFFENSES, STATUTORY INTERPRETATION. Jeffery Sanders recorded his sexual encounters with a 16-year-old minor and enticed her to send nude pictures, which led to convictions for sexual exploitation of a child and aggravated intimidation of a witness for attempting to discourage her from disclosing their relationship. Sanders appealed, challenging the constitutionality of the exploitation statute for criminalizing private, consensual sexual conduct, and arguing the identical offense doctrine required resentencing for an attempted intimidation. The Court of Appeals found making and distributing child pornography is not a constitutionally protected activity simply because the minor can lawfully consent to sexual activity. Also, the identical offense doctrine is inapplicable to aggravated intimidation of a witness because the offense incorporates attempt as an element.

> *State of Kansas v. Jeffery A. Sanders*, 65 Kan. App. 2d 236, 563 P.3d 234 (Jan. 10, 2025), *petition for rev. filed* (Feb. 7, 2025), *petition for rev. denied* (May 21, 2025).

JURY INSTRUCTIONS. Jared Payne was convicted of involuntary manslaughter and aggravated battery after his vehicle collided with a semi-truck. At trial, Payne requested jury instructions on proximate cause and whether he or the semi-truck driver caused the crash. The district court denied the request. The Court of Appeals panel held that even though Payne's proposed instructions may have been legally and factually appropriate, the district court was not required to give them to the jury because the causation element was adequately encompassed in the PIK instructions for the crimes charged.

> *State v. Payne,* 65 Kan. App. 2d 283, 563 P.3d 253 (Jan. 31, 2025), *petition for rev. filed* (Mar. 2, 2025), *petition for rev. granted* (Apr. 21, 2025).

EVIDENCE

CRIMINAL HISTORY. For the first time on appeal, Emery contended that his criminal history score was improperly calculated making his sentence illegal because a conviction from a different state was scored incorrectly. The Court of Appeals held that when an offender raises a criminal history challenge for the first time on appeal, K.S.A. 21-6814(d) allows an appellate court to consider journal entries from Kansas and out-of-state convictions if the challenge can be answered on the face of the journal entries. If not, and further

evidence is required, K.S.A. 21-6814(d) allows an appellate court to take judicial notice of journal entries, complaints, plea agreements, jury instructions, and verdict forms from Kansas convictions only.

> *State of Kansas v. Willie Joe Emery*, __ Kan. App. 2d __, __ P.3d __, 2025 WL 2426609, 127,476 (August 22, 2025).

FOUNDATION. Colwell was convicted of stalking, violating a protective order, and harassment by telephone, for contacting his ex-girlfriend after she filed for a protection from stalking order. Over Colwell's foundation objection, the district court admitted the return of service form for the protective order as an exhibit at trial. The Court of Appeals panel held the court properly authenticated the document as a copy of an official court record to allow admission. The panel also determined there was sufficient evidence to show Colwell was personally served and had knowledge of the protective order when he violated it.

> *State of Kansas v. John Francis Colwell*, ___ Kan. App. 2d___, __ P.3d ___, 2025 WL 2426549, 126,068 (August 22, 2025), *petition for rev. was filed* (Sept. 22, 2025).

BUISNESS-RECORDS DECLARATION. Levi Kemp was charged and later convicted with sexual exploitation of a child after Oath Holdings, Inc., informed the police of suspected child-sexual-abuse materials associated with Kemp's account. Oath Holdings provided documents to comply with a search warrant, along with an out-of-state declaration authenticating the documents as sworn under penalty of perjury under United States, but not Kansas, law. The Court of Appeals affirmed the conviction, holding that the declaration substantially complied with the statute.

> *State v. Kemp*, 65 Kan. App. 2d 425, 564 P.3d 827 (Feb. 28, 2025).

NON-DISCLOSURE BY PROSECUTION. Adrean Marquis Newson was convicted by a jury of rape, despite Newson's claim that the sex was consensual. During the trial, Newson's attorney moved to dismiss the charge after discovering that the State had not disclosed material evidence. On appeal, the Court of Appeals reversed, holding that the

district court abused its discretion in denying the motion without first reviewing the evidence.

State of Kansas v. Adrean Marquis Newson, 65 Kan. App. 2d 310, 564 P.3d 1 (Feb. 7, 2025).

JURISDICTION

MOOTNESS. A case is moot when a court determines that it is clearly and convincingly shown the actual controversy has ended, the only judgment that could be entered would be ineffectual for any purpose, and it would not impact any of the parties' rights. Once a court determines that an issue is moot, courts lack constitutional authority—i.e., jurisdiction—to review that issue.

State v. Phipps, 320 Kan. 616, 570 P.3d 1240 (Jun. 27, 2025).

JURY INSTRUCTIONS

VOLUNTARY MANSLAUGHTER. A voluntary manslaughter instruction for a killing done upon a "sudden quarrel or in the heat of passion" requires some objective evidence of sufficient provocation. Evidence of sufficient provocation is necessary even under a theory of a sudden quarrel.

State v. Thille, 320 Kan. 435, 570 P.3d 18 (Jun. 13, 2025).

INSTRUCTION TO ENCOURAGE DISCUSSION. Where members of a jury express concern that one juror refuses to engage in group discussions, it is not error for the judge to instruct, "I'd remind you that the deliberation process requires a discussion among your fellow jury members related to the facts and the law in your attempt to come to a verdict in this case." This instruction is "far more similar" to the standard PIK instruction than to an *Allen*-type instruction, which "encourages the jury to reach a unanimous verdict so as to avoid a mistrial."

State v. Hollins, 320 Kan. 240, 564 P.3d 778 (Mar. 7, 2025).

OFFENDER REGISTRATION

TRANSIENT OFFENDERS. KORA requires a transient offender to register every 30 days, or more often at the discretion of the registering agency. A person is transient if he or she has no fixed or identifiable residence, which means no particular and definable place or places where a person resides. KORA uses terms and definitions to define transient status that vary from commonly understood definitions. Thus, it may be clear error to sua sponte

provide such definition where the evidence of transient status is sparse and some evidence supports a conclusion the offender was not transient.

State v. Ballard, 320 Kan. 269, 566 P.3d 1092 (Apr. 11, 2025).

POSTCONVICTION MOTIONS

DNA TESTINGS. The statute permitting post-conviction DNA testing does not mandate such testing based on a mere allegation that testing could produce exculpatory evidence. District courts must assess the possibility that testing could produce exculpatory evidence, and this may entail both factual findings and conclusions of law.

State v. Holt, __ Kan. __, 573 P.3d 665 (Aug. 8, 2025).

PRIVILEGE AGAINST SELF-INCRIMINATION

COMPELLED TESTIMONY. A witness cannot invoke the Fifth Amendment to avoid testifying based on the risk of a *future* perjury prosecution. The possibility of a future perjury prosecution is a hypothetical or speculative risk that every witness faces regardless of whether the witness intends to testify truthfully or falsely and consistently or inconsistently with a prior statement or testimony.

State v. Adams, 320 Kan. 49, 563 P.3d 719 (Feb. 14, 2025).

COMPELLING PASSCODE OR FINGERPRINT ACCESS. Advising an accused that officers can obtain an order compelling fingerprint access or the passcode to unlock a cell phone is not per se inherently coercive, even though the legality of such an order remains an open question in Kansas. The critical question is whether the officers have a reasonable basis to believe that a court will issue such an order.

State v. Harris, 320 Kan. 31, 562 P.3d 1001 (Jan. 31, 2025).

SPONTANEOUS STATEMENTS. The procedural safeguards of *Miranda* are not required when a suspect is simply taken into custody; they only begin to operate when a suspect in custody is subjected to interrogation. When law enforcement officers say nothing to prompt spontaneous statements from a suspect, there is no basis for finding even subtle

compulsion. Recorded unsolicited statements a suspect makes while sitting alone in the back of a police car are admissible even if the suspect has not yet been *Mirandized*.

State v. Younger, 320 Kan. 98, 564 P.3d 744 (Feb. 21, 2025) (modified opinion); *State v. Younger*, 319 Kan. 585, 556 P.3d 838 (Oct. 4, 2024) (original opinion).

PROBATOIN

CONSECUTIVE PROBATION. Edward Oathout appealed sentencing after guilty pleas in two consolidated cases. The district court imposed two consecutive terms of probation. On appeal, the Court of Appeals held that the district court impermissibly imposed consecutive probation cases and remanded with directions to impose lawful concurrent periods of probation.

State v. Edward Oathout, 65 Kan. App. 2d 851, 573 P.3d 751, 2025 WL 2017045, 127,588 and 127,589 (July 18, 2025).

PROBATION REVOCATION—JURISDICTION. After violating the terms of her probation, the district court extended Jasmine Jackson's probation beyond the statutory maximum probation term. The Court of Appeals held the district court lacked jurisdiction to extend a defendant's probation beyond the statutory maximum.

State v. Jasmine M. Jackson, __ Kan. App. 2d __, __ P.3d __, 2025 WL 2486468, 126,946, 126,947, and 126,948 (Aug. 29, 2025)

PROBATION REVOCATION

INTERMEDIATE SANCTIONS. The district court revoked Kaitlyn McRoberts' probation after she stipulated to committing a new crime while on probation. On the revocation journal entry, the court wrote that it was revoking because McRoberts' served a jail sanction imposed by her probation officer and that the court was *not* relying on any exception to the intermediate sanction scheme in K.S.A. 22-3716(c)(7)(C). The Court of Appeals reversed because K.S.A. 22-3716(c)(1)(C) requires that the district court (not a probation officer) previously impose a jail sanction before it may revoke. The Court also held that it could

not rely on the new crime exception to affirm the revocation because the district court specifically rejected that basis.

State v. Kaitlyn Nicole McRoberts, 65 Kan. App. 2d 481, 567 P.3d 905 (Mar. 28, 2025), *petition for rev. filed* (Apr. 22, 2025), *petition for rev. denied* (Jun. 20, 2025).

PROSECUTORIAL ERROR

CONTEMPORANEOUS OBJECTION. Although a contemporaneous objection is generally not required to preserve prosecutorial error claims for appellate review, K.S.A. 60-404 necessitates one when the claim essentially relates to an evidentiary issue—such as a prosecutor's question or a witness' answer.

State v. Wash, 320 Kan. 646, 571 P.3d 568 (Jun. 27, 2025).

RESTITUTION

PRESERVATION. The contemporaneous-objection rule does not apply when deciding whether properly admitted evidence supports a court's factual findings. A defendant may challenge the sufficiency of evidence supporting a restitution amount on appeal without first objecting at sentencing because the State bears the burden of establishing that amount.

State v. Humphrey, 320 Kan. 348, 568 P.3d 506 (May 9, 2025).

REVERSIBLE ERROR

VENUE; PROSECUTORIAL ERROR. A jury convicted Hartman of electronic solicitation of a child, among other child sex crimes. On appeal, Hartman raised several issues related to proving venue in cases involving crimes committed with electronic devices under K.S.A. 22-2619. The Court of Appeals found that the State presented sufficient evidence to establish that venue was proper in Shawnee County and that the district court's instructional error regarding venue was not clearly erroneous. The Court, however, reversed the conviction for electronic solicitation of a child and remanded for retrial on that count, find-

ing that the State committed reversible prosecutorial error during closing argument by telling the jurors that venue for the electronic solicitation charge could be established, in part, by the evidence of the intended victim's fictitious residence.

State of Kansas v. Chad Wayne Hartman, __ Kan. App. 2d __, __ P.3d __, 2025 WL 2552314, 127,354 (September 5, 2025), *petition for rev. was filed* (Oct. 3, 2025).

RIGHT AGAINST SELF-INCRIMINATION

CORPUS DELICTI & VOLUNTARINESS. Henry Reynolds was convicted of aggravated indecent liberties with a child, largely based on his admission that he touched his three-year-old daughter to see the difference between a woman and a child. Reynolds, an intellectually disabled man, provided the admissions after the detective informed him that a Computer Voice Stress Analysis (CVSA) test revealed that Reynolds was lying and other pressure by the detective. On appeal, the Court of Appeals held that Reynolds' confession was the result of police coercion because the State failed to meet its burden of establishing that Reynolds' confession was voluntary and not the result of police coercion.

State v. Reynolds, 65 Kan. App 2d 337, 564 P.3d 404 (Feb. 7, 2025).

POSTRELEASE POLYGRAPH TEST. Thomas Goforth took a polygraph examination as a requirement of his postrelease supervision. His responses prompted a warrantless search of his phone—completed by a police officer at the request of parole officers—which led to the discovery of child pornography. After Goforth unsuccessfully moved to suppress the images, a jury convicted Goforth. He appealed, arguing the evidence stemmed from compelled, self-incriminating statements in violation of his Fourth and Fifth Amendment rights. The Court of Appeals found Goforth failed to affirmatively assert his Fifth Amendment right. Also, no Fourth Amendment violation occurred because a warrant was not required for the parole officers' search, even though the police assisted.

State of Kansas v. Thomas Goforth, 65 Kan. App. 2d 108, 561 P.3d 523 (Nov. 22, 2024), *petition for rev. filed* (Dec. 23, 2024), *petition for rev. denied* (Feb. 28, 2025).

SEARCHES AND SEIZURE

LICENSE PLATE VISIBILITY. Kansas does not require the display of the state name on license plates issued in the state except on registration decals. A law enforcement officer

does not have reasonable suspicion that a violation of Kansas statutes is occurring when the officer has difficulty reading or is unable to read the state name on a license plate.

State v. Beck, 320 Kan. 747, 571 P.3d 537 (July 3, 2025).

DRUG SNIFF DOG. When a lawful traffic stop reveals a driver who has a suspended license, calling a K-9 unit to do a drug sniff of the car does not impermissibly extend the length of a stop because the car is legally parked in the street and the driver cannot legally move the car.

State v. Wilson, __ Kan. __, 569 P.3d 512 (May 30, 2025).

CIVIL FORFEITURE. A Kansas Highway Patrol Trooper stopped Bryce Robert Fuleki for a traffic violation and seized a suitcase full of cash. The KHP brought a civil forfeiture proceeding, and Fuleki appeared through counsel to file a motion to suppress the seizure of the suitcase. The district court concluded that Fuleki lacked standing because he had disclaimed any property interest in the suitcase or its contents and declined to rule on the motion to suppress. On appeal, the Court of Appeals reversed, concluding that the district court erred in dismissing Fuleki from the civil forfeiture proceeding for lack of standing before resolving the motion to suppress because the government may only forfeit property lawfully seized.

State of Kansas ex rel. Kansas Highway Patrol v. $381,620 in U.S. Currency and Bryce Robert Fuleki, 65 Kan. App. 2d 596, 571 P.3d 35 (May 2, 2025), *petition for rev. filed* (May 30, 2025), *petition for rev. was granted* (Aug. 21, 2025).

SENTENCING

JAIL CREDIT; CONSECUTIVE SENTENCES. Deandre Kavaughn Martin, an inmate at Lansing Correctional Facility, was convicted of attempted aggravated battery on a corrections officer, which he committed while incarcerated. He was sentenced to 46 months, consecutive to his existing sentences. The court denied Martin's request for 722 days of jail credit for time incarcerated while this case was pending. The Court of Appeals panel affirmed, holding that Martin's incarceration in prison did not stem from nor was it related to his new crime. The court refused to expand the holding in *Ervin*, reasoning that doing so would allow inmates to avoid punishment for new crimes committed while incarcerated.

State of Kansas v. Deandre Kavaughn Martin, __ Kan. App. 2d __, __ P.3d __, 2025 WL 2737152, 127,843 (September 26, 2025).

JAIL CREDIT; CONSECUTIVE SENTENCES. Patrick Watie was on probation when he pleaded guilty to a new crime. The district court ordered Watie's new sentence to

run consecutively to his old one. At sentencing, the district court informed Watie he would get jail credit for only one sentence or the other. Watie appealed and the Court of Appeals reversed. Under *Ervin*, Watie is entitled to receive jail credit in both cases even if it results in the nullification of his consecutive sentences.

> *State of Kansas v. Patrick L. Watie*, __ Kan. App. 2d _, __ P.3d __, 2025 WL 2737980, 127,509 (September 26, 2025)

JAIL CREDIT; BOND. Christopher Lee Thompson violated his bond by failing to appear at a hearing. He was arrested and incarcerated in Missouri on separate charges. The district court refused to award Thompson jail credit for time jailed in Missouri. On appeal, the Court of Appeals affirmed, holding that *Ervin* did not apply to Thompson because he was out on bond when he was arrested and held in Missouri on different charges.

> *State v. Thompson*, __ Kan. App. 2d __, __ P.3d __, 2025 WL 2810685, 128,181 (Oct. 3, 2025)

JAIL CREDIT. Lowell Hill pled no contest to possession with the intent to distribute methamphetamine. Before his plea, Hill spent 90 days in Crawford County jail before being released on bond. Hill then spent time in a different jail on an unrelated case. At sentencing in this case, the district court granted Hill 90 days of jail time credit for the time he spent in the Crawford County jail. On appeal, the panel affirmed the district court's decision. The panel determined that Hill was not owed additional jail credit since he was on bail in this case and his time in custody was for an unrelated case.

> *State of Kansas v. Lowell Eric Hill*, __ Kan. App. 2d __, __ P.3d __, 2025 WL 2737255, 127,959 (September. 26, 2025)

JAIL CREDIT; STATUTORY INTERPRETATION. Alvin James Mason pleaded guilty to attempted sexual exploitation of a child and attempted electronic solicitation, based on acts committed while he was in jail awaiting disposition of unrelated charges. At sentencing, the district court declined to award Mason jail credit for the time he spent in jail prior to committing the new offenses and ordered him to pay $800 in CAC fees. On appeal, the panel affirmed the denial of jail credit, holding a criminal case cannot be considered pending disposition before the crimes are committed. The panel also affirmed the assessment of fees based on the plain language of the statute requiring a $400 fee for each crime committed against a minor.

> *State of Kansas v. Alvin James Mason*, __ Kan. App. 2d __, __ P.3d __, 2025 WL ___ (October 3, 2025).

STATUTORY INTERPRETATION; RETROACTIVITY. Steven Alexander Mitchell was convicted of six crimes in two separate cases. Sentencing was delayed until

after the Legislature amended the jail credit statute, K.S.A. 21-6615. The district court denied Mitchell jail time credit in both cases, applying the amended statute. On appeal, the Court of Appeals reversed, holding that the amendment did not apply retroactively to Mitchell's crimes committed before the enactment date. Under *Ervin*, Mitchell was entitled to jail time credit against the sentences imposed in both cases.

> *State of Kansas v. Steven Alexander Mitchell*, __ Kan. App. 2d __, __ P.3d __, 2025 WL 2810400, 127,852 (October 3, 2025).

DUE PROCESS. The district court imposed lifetime postrelease supervision on Jorge Ponce Contreras' convictions for aggravated indecent solicitation of a child. For the first time on appeal, Contreras challenged the postrelease supervision term as a violation of his due process rights under *Apprendi v. New Jersey*. The Court of Appeals agreed that Contreras did not validly waive his right to a jury determination of his age—a fact used by the district court to increase the penalty associated with his convictions.

> *State of Kansas v. Jorge Ponce Contreras*, __ Kan. App. 2d __, __ P.3d __, 2025 WL 2809768, 127,830 (October 3, 2025).

JAIL CREDIT; PRESERVATION. Jacob Michael Jelinek pleaded guilty to multiple charges across two cases, including at least one sexually violent offense. Because Jelinek admitted he was over 18 when he committed the sexually violent offense, the district court imposed lifetime postrelease supervision. The court also declined to award Jelinek jail credit in one of the cases because it would be duplicative. The Court of Appeals vacated the denial of jail credit and remanded with directions to award credit in both cases and elected not to consider the merits of the newly raised challenge to the lifetime postrelease supervision term.

> *State of Kansas v. Jacob Michael Jelinek*, __ Kan. App. 2d __, __ P.3d __, 2025 WL 2630095, 128,002 and 128,003 (September 12, 2025).

JAIL TIME CREDIT. Kristen Brown's probation was revoked in two cases because she committed a new crime. On appeal, she argued the district court erred in only awarding jail credit on the sentence in one of her cases. The Court of Appeals reversed, holding that under *State v. Ervin*, 320 Kan. 287, Syl. ¶ 12, 566 P.3d 481 (2025), district courts must award one day of jail credit for each day a defendant is incarcerated pending disposition of

the defendant's case regardless of whether he received an allowance for some or all that time against a sentence in another case.

> *State of Kansas v. Kristen E. Brown*, 65 Kan. App. 2d 663, 570 P.3d 1278, 2025 WL 1668561, 126,998 and 126,999 (June 13, 2025), *petition for rev. was filed* (Jul. 14, 2025).

SPECIAL SENTENCING RULES—ILLEGAL SENTENCE Dustin Lund received his second and third convictions for unlawful possession of a controlled substance under K.S.A. 21-5706 within one month of each other. Lund was sentenced in the second case before he was sentenced in the third. Lund challenged the district court's use of a special sentencing rule which created a presumption of prison for a "third or subsequent felony conviction". The court held that the district court erred because the sentencing rule is only implicated only when the defendant has two qualifying felony convictions before the conviction to which the rule is applied.

> *State v. Lund*, 65 Kan. App. 2d 416, 564 P.3d 820 (Feb. 14, 2025), *petition for rev. filed* (Feb. 24, 2025), *petition for rev. denied* (Mar. 27, 2025).

DRUG CRIMES—PRESUMPTIVE SENTENCE: In two separate, non-consolidated cases, Brandon Steven Russell Bell pleaded no contest to two counts of possession of methamphetamine. While awaiting sentencing, Bell subsequently tested positive for methamphetamine twice. During sentencing, the district court imposed presumptive prison terms for each conviction, classifying both convictions as a third felony conviction under K.S.A. 21-6805(f)(1). Bell appealed, arguing the district court erred by imposing the presumptive prison sentence for both of his convictions. The Court of Appeals reversed, holding that both convictions could not be designated as third convictions requiring presumptive prison.

> *State of Kansas v. Brandon Steven Russell Bell*, 65 Kan. App. 2d 160, 561 P.3d 562 (Dec. 20, 2024).

SPEEDIY TRIAL

COVID-19 DELAYS. In determining whether the State has violated a defendant's constitutional right to a speedy trial, Kansas courts apply the *Barker* four-factor balancing test. The Kansas Supreme Court has previously held that courts should take a neutral approach to considering COVID-19 related delays in evaluating the presumptive prejudice under the

first *Barker* factor. It now extends that approach to the second *Barker* factor, which is the reason for delay, and includes assigning responsibility for any delay.

State v. Cherry, 320 Kan. 784, 571 P.3d 976 (Jul. 18, 2025).

SUFFICIENCY OF THE EVIDENCE

REASONABLE EXPECTATION OF PRIVACY. Ivy was convicted of breach of privacy for sharing a sexually explicit video recorded by his ex-girlfriend, S.P., during their relationship. The Court of Appeals panel held S.P. had both a subjectively and objectively reasonable expectation of privacy in the video under the circumstances to support the conviction. The panel also held Ivy's constitutional right to be present was not violated simply because plexiglass panels and a lectern obstructed the jury's view of him during trial.

State of Kansas v. Jeremiah IJL Ivy, ___ Kan. App. 2d___, 567 P.3d 858, 2025 WL 1087981, 126,575 (April 11, 2025), *petition for rev. filed* (May 12, 2025), *petition for rev. denied* (Sept. 8, 2025).

FELONY MURDER. Felony murder is the killing of a human being during the commission of an inherently dangerous felony. The State must establish all the elements of the underlying felony to successfully prove a felony murder charge. When the underlying felony is distribution of a controlled substance, simply acquiring a controlled substance in a drug buy is not enough to prove the *recipient's* guilt for distribution of that substance.

State v. Stuart, 319 Kan. 633, 556 P.3d 633 (Oct. 4, 2024).

TRIAL RIGHTS

KANSAS CONSTITUTION VICINAGE PROVISION. Vicinage refers to the place from which jurors are drawn. Like venue, vicinage is related to location, but it speaks to where the jurors are drawn rather than where the trial is held. §10's right to "an impartial jury of the county or district in which the offense is alleged to have been committed" is a *vicinage* provision rather than a *jurisdiction* provision. The right is a personal privilege and is waived if not asserted at the district court.

State v. Barnes, 320 Kan. 147, 563 P.3d 1255 (Feb. 21, 2025).