



**For Immediate Release
August 5, 2024**

Sedgwick County District Attorney Marc Bennett and Riley County Attorney Barry Wilkerson agreed to serve as special prosecutors at the request of the elected Marion County Attorney, Joel Ensey, in order to review the events that led to the issuance and execution of search warrants in Marion, Kansas on Friday, August 11, 2023. The investigation was initially begun by the Kansas Bureau of Investigation before being turned over to the Colorado Bureau of Investigation in November of 2023.

SCOPE OF REPORT

This report details the findings and conclusions of the special prosecutors and is limited specifically to the assessment of criminal liability of various individuals regarding the issuance of the warrants in question, the execution of the signed warrants and actions taken thereafter.

Neither Mr. Bennett nor Mr. Wilkerson possess, nor do they seek to impose, any administrative or civil authority as to any of the persons or agencies listed herein. This report does not address possible violations of federal criminal law, as the special prosecutors are authorized to assess violations of Kansas law only.

Additionally, this report does not address any administrative review that may be conducted or may have been conducted by or concerning the Marion County, Sheriff's Department; the Marion Police Department; the Kansas Bureau of Investigation; or agencies that hold licensing authority over any of the parties acting under authority of their respective professions, including The Kansas Commission on Peace Officer's

Standards and Training (CPOST); The Kansas Bar Association, or the Kansas Commission on Judicial Conduct.

This report offers no commentary as to any collateral assessment of any agency's policy considerations, nor does this report attempt to address questions of civil liability where a lesser burden of proof would apply.

Pursuant to Kansas Supreme Court Rule 3.6, this report offers no commentary on any pending adjudicative proceeding(s).

Pursuant to Kansas Supreme Court Rule 3.8, the above and foregoing report is intended solely to "inform the public of the nature and extent of the [special] prosecutor's action and . . . serve a legitimate law enforcement purpose."

Relevant Kansas Statutes, Case Law & Constitutional Principles

The issuance and execution of search warrants in Marion, Kansas on August 11, 2023, has received broad attention regionally, nationally and internationally. For the edification of the public who may be unfamiliar with Kansas laws and legal principles, the Kansas statutes and legal authority which were evaluated by the special prosecutors in this matter are included herein in their entirety. Constitutional principles that control the analysis are also included below with explanation.

Where applicable, emphasis is added on words or phrases that are specifically germane to the analysis of the instant investigation.

I

General principles of criminal liability under Kansas law

K.S.A. 21-5202. Culpable mental state; definition of intentionally, knowingly, recklessly. (a) Except as otherwise provided, *a culpable mental state is an essential element of every crime defined by this code* (emphasis added). A culpable mental state may be established by proof that the conduct of the accused person was committed "intentionally," "knowingly" or "recklessly."

(b) Culpable mental states are classified according to relative degrees, from highest to lowest, as follows:

- (1) Intentionally;
- (2) knowingly;
- (3) recklessly.

(c) Proof of a higher degree of culpability than that charged constitutes proof of the culpability charged. If recklessness suffices to establish an element, that element also is established if a person acts knowingly or intentionally. If acting knowingly suffices to establish an element, that element also is established if a person acts intentionally.

(d) If the definition of a crime does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element.

(e) If the definition of a crime does not prescribe a culpable mental state, but one is nevertheless required under subsection (d), "intent," "knowledge" or "recklessness" suffices to establish criminal responsibility.

(f) If the definition of a crime prescribes a culpable mental state that is sufficient for the commission of a crime, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the crime, unless a contrary purpose plainly appears.

(g) If the definition of a crime prescribes a culpable mental state with regard to a particular element or elements of that crime, the prescribed culpable mental state shall be required only as to specified element or elements, and a culpable mental state shall not be required as to any other element of the crime unless otherwise provided.

(h) A person acts "intentionally," or "with intent," with respect to the nature of such person's conduct or to a result of such person's conduct when it is such person's conscious objective or desire to engage in the conduct or cause the result. All crimes defined in this code in which the mental culpability requirement is expressed as "intentionally" or "with intent" are specific intent crimes. A crime may provide that any other culpability requirement is a specific intent.

(i) A person acts "knowingly," or "with knowledge," with respect to the nature of such person's conduct or to circumstances surrounding such person's conduct when such person is aware of the nature of such person's conduct or that the circumstances exist. A person acts "knowingly," or "with knowledge," with respect to a result of such person's conduct when such person is aware that such person's conduct is reasonably certain to cause the result. All crimes defined in this code in which the mental culpability requirement is expressed as "knowingly," "known," or "with knowledge" are general intent crimes.

(j) A person acts "recklessly" or is "reckless," when such person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

In *State v. Dinkel*, 314 Kan. 146, 156 (2021), the Kansas Supreme Court explained that, for behavior to constitute a crime, the actor must possess the requisite criminal intent:

“Generally, ‘conduct, to be criminal, must consist of something more than mere action (or non-action where there is a legal duty to act); some sort of bad state of mind is required as well.’ 1 LaFave, *Substantive Criminal Law, Nature of criminal law—Basic premises* § 1.2(b) (3d ed. 2020).

Kansas codifies this legal principle at K.S.A. 2020 Supp. 21-5202(a), which provides that ‘a culpable mental state is an essential element of every crime ...’ and that ‘[a] culpable mental state may be established by proof that the conduct of the accused person was committed ‘intentionally,’ ‘knowingly,’ or ‘recklessly.’ ”

K.S.A. 21-5207. Ignorance or mistake. (a) *A person's ignorance or mistake as to a matter of either fact or law, except as provided in K.S.A. 21-5204, and amendments thereto, is a defense if it negates the existence of the culpable mental state which the statute prescribes with respect to an element of the crime.* (emphasis added).

(b) A person’s reasonable belief that such person’s conduct does not constitute a crime is a defense if:

(1) The crime is defined by an administrative regulation or order which is not known to such person and has not been published in the Kansas administrative regulations or an annual supplement thereto, as provided by law; and such person could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to such person;

(2) such person acts in reliance upon a statute which later is determined to be invalid;

(3) such person acts in reliance upon an order or opinion of the supreme court of Kansas or a United States appellate court later overruled or reversed; or

(4) such person acts in reliance upon an official interpretation of the statute, regulation or order defining the crime made by a public officer or agency legally authorized to interpret such statute.

(c) Although a person’s ignorance or mistake of fact or law, or reasonable belief, as described in subsection (b), is a defense to the crime charged, such person may be convicted of an included crime of which such person would be guilty if the fact or law were as such person believed it to be.

“ . . . the mistake of fact doctrine merely reflects the State’s burden to prove every element of the offense: the State cannot convict the defendant if it fails to show that the defendant had the required mental state when committing the crime.” *State v. Diaz*, 44 Kan. App. 2d 870, Syl. 1 (2010).”
State v. Blackmon, unpublished, 2023WL 176649 (2023)

II

Regarding the parties who obtained the driving record of Kari Newell directly from the Kansas Department of Review or later shared the same

K.S.A. 21-5839 Unlawful Acts Concerning Computers (a) It is unlawful for any person to:

(1) *Knowingly and without authorization access* (emphasis added) and damage, modify, alter, destroy, copy, disclose or take possession of a computer, computer system, computer network or any other property (emphasis added);

(2) use a computer, computer system, computer network or any other property for the purpose of devising or executing a scheme or artifice with the intent to defraud or to obtain money, property, services or any other thing of value by means of false or fraudulent pretense or representation;

(3) knowingly exceed the limits of authorization and damage, modify, alter, destroy, copy, disclose or take possession of a computer, computer system, computer network or any other property;

(4) knowingly and without authorization, disclose a number, code, password or other means of access to a computer, computer network, social networking website or personal electronic content; or

(5) knowingly and without authorization, access or attempt to access any computer, computer system, social networking website, computer network or computer software, program, documentation, data or property contained in any computer, computer system or computer network.

(b) (1) Except as provided in (b)(2), violation of subsections (a)(1), (a)(2) or (a)(3) is a severity level 8, nonperson felony.

(2) Violation of subsections (a)(1), (a)(2) or (a)(3) is a severity level 5, nonperson felony if the monetary loss to the victim or victims is more than \$100,000.

(3) Violation of subsections (a)(4) or (a)(5) is a class A nonperson misdemeanor.

(c) In any prosecution for a violation of subsections (a)(1), (a)(2) or (a)(3), it shall be a defense that the property or services were appropriated openly and avowedly under a claim of title made in good faith.

(d) As used in this section:

(1) "Access" means to instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or computer network;

(2) "computer" means an electronic device which performs work using programmed instruction and which has one or more of the capabilities of storage, logic, arithmetic or communication and includes all input, output, processing, storage, software or communication facilities which are connected or related to such a device in a system or network;

(3) "computer network" means the interconnection of communication lines, including microwave or other means of electronic communication, with a computer through remote terminals, or a complex consisting of two or more interconnected computers;

(4) "computer program" means a series of instructions or statements in a form acceptable to a computer which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system;

- (5) "computer software" means computer programs, procedures and associated documentation concerned with the operation of a computer system;
- (6) "computer system" means a set of related computer equipment or devices and computer software which may be connected or unconnected;
- (7) "financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, debit card or marketable security;
- (8) "personal electronic content" means the electronically stored content of an individual including, but not limited to, pictures, videos, emails and other data files;
- (9) "property" includes, but is not limited to, financial instruments, information, electronically produced or stored data, supporting documentation and computer software in either machine or human readable form;
- (10) "services" includes, but is not limited to, computer time, data processing and storage functions and other uses of a computer, computer system or computer network to perform useful work;
- (11) "social networking website" means a privacy-protected internet website which allows individuals to construct a public or semi-public profile within a bounded system created by the service, create a list of other users with whom the individual shares a connection within the system and view and navigate the list of users with whom the individual shares a connection and those lists of users made by others within the system; and
- (12) "supporting documentation" includes, but is not limited to, all documentation used in the construction, classification, implementation, use or modification of computer software, computer programs or data.

K.S.A. 21-6101. Breach of privacy. (a) Breach of privacy is knowingly and without lawful authority:

- (1) Intercepting, without the consent of the sender or receiver, a message by telephone, telegraph, letter or other means of private communication;
- (2) *divulging, without the consent of the sender or receiver, the existence or contents of such message if such person knows that the message was illegally intercepted, or if such person illegally learned of the message in the course of employment with an agency in transmitting it* (emphasis added);
- (3) entering with intent to listen surreptitiously to private conversations in a private place or to observe the personal conduct of any other person or persons entitled to privacy therein;
- (4) installing or using outside or inside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in such place, which sounds would not ordinarily be audible or comprehensible without the use of such device, without the consent of the person or persons entitled to privacy therein;
- (5) installing or using any device or equipment for the interception of any telephone, telegraph or other wire or wireless communication without the consent of the person in possession or control of the facilities for such communication;
- (6) installing or using a concealed camcorder, motion picture camera or photographic camera of any type to secretly videotape, film, photograph or record, by electronic or other means, another identifiable person under or through the clothing being worn by that other person or another identifiable

person who is nude or in a state of undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to invade the privacy of that other person, under circumstances in which that other person has a reasonable expectation of privacy;

(7) disseminating or permitting the dissemination of any videotape, photograph, film or image obtained in violation of subsection (a)(6); or

(8) disseminating any videotape, photograph, film or image of another identifiable person 18 years of age or older who is nude or engaged in sexual activity and under circumstances in which such identifiable person had a reasonable expectation of privacy, with the intent to harass, threaten or intimidate such identifiable person, and such identifiable person did not consent to such dissemination.

(b) Breach of privacy as defined in:

(1) Subsection (a)(1) through (a)(5) is a class A nonperson misdemeanor;

(2) subsection (a)(6) or (a)(8) is a:

(A) Severity level 8, person felony, except as provided in subsection (b)(2)(B); and

(B) severity level 5, person felony upon a second or subsequent conviction within the previous five years; and

(3) subsection (a)(7) is a severity level 5, person felony.

(c) Subsection (a)(1) shall not apply to messages overheard through a regularly installed instrument on a telephone party line or on an extension.

(d) The provisions of this section shall not apply to: (1) An operator of a switchboard, or any officer, employee or agent of any public utility providing telephone communications service, whose facilities are used in the transmission of a communication, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity which is incident to the rendition of public utility service or to the protection of the rights of property of such public utility; (2) a provider of an interactive computer service, as defined in 47 U.S.C. § 230, for content provided by another person; (3) a radio common carrier, as defined in K.S.A. 66-1,143, and amendments thereto; and (4) a local exchange carrier or telecommunications carrier as defined in K.S.A. 66-1,187, and amendments thereto.

(e) The provisions of subsection (a)(8) shall not apply to a person acting with a bona fide and lawful scientific, educational, governmental, news or other similar public purpose.

(f) As used in this section, "private place" means a place where one may reasonably expect to be safe from uninvited intrusion or surveillance.

K.S.A. 21-6103. Criminal false communication. (a) Criminal false communication is:

(1) Communicating to any person, by any means, information that the person communicating such *information knows to be false* and will tend to (emphasis added):

(A) Expose another living person to public hatred, contempt or ridicule;

(B) deprive such person of the benefits of public confidence and social acceptance;

or

(C) degrade and vilify the memory of one who is dead and to scandalize or provoke surviving relatives and friends; or
(2) recklessly making, circulating or causing to be circulated any false report, statement or rumor with intent to injure the financial standing or reputation of any bank, financial or business institution or the financial standing of any individual in this state.

(b) Criminal false communication is a class A nonperson misdemeanor.

(c) In all prosecutions under this section the truth of the information communicated shall be admitted as evidence. It shall be a defense to a charge of criminal false communication if it is found that such matter was true.

K.S.A. 21-6105. Unjustifiably exposing a convicted or charged person. (a) Unjustifiably exposing a convicted or charged person is unjustifiably communicating or threatening to communicate to another any oral or written statement that any person has been charged with or convicted *of a felony*, with intent to interfere with the employment or business of the person so charged or convicted.

(b) Unjustifiably exposing a convicted or charged person is a class B nonperson misdemeanor.

(c) This section shall not apply to any person or organization who furnishes information about a person to another person or organization requesting the same.

K.S.A. (2023 Supp.) 21-6107. Identity theft; identity fraud. (a) Identity theft is obtaining, possessing, transferring, using, selling or purchasing any personal identifying information, or document containing the same, belonging to or issued to another person, *with the intent to:*

(1) *Defraud that person, or anyone else, in order to receive any benefit; or (emphasis added)*

(2) misrepresent that person in order to subject that person to economic or bodily harm.

(b) Identity fraud is:

(1) Using or supplying information the person knows to be false in order to obtain a document containing any personal identifying information; or

(2) altering, amending, counterfeiting, making, manufacturing or otherwise replicating any document containing personal identifying information with the intent to deceive;

(c) (1) Identity theft is a:

(A) Severity level 8, nonperson felony, except as provided in subsection (c)(1)(B); and

(B) severity level 5, nonperson felony if the monetary loss to the victim or victims is more than \$100,000.

(2) Identity fraud is a severity level 8, nonperson felony.

(d) It is not a defense that the person did not know that such personal identifying information belongs to another person, or that the person to whom such personal identifying information belongs or was issued is deceased.

(e) As used in this section:

- (1) "Personal electronic content" means the electronically stored content of an individual including, but not limited to, pictures, videos, emails and other data files;
- (2) "personal identifying information" includes, but is not limited to, the following:
- (A) Name;
 - (B) birth date;
 - (C) address;
 - (D) telephone number;
 - (E) driver's license number or card or nondriver's identification number or card;
 - (F) social security number or card;
 - (G) place of employment;
 - (H) employee identification numbers or other personal identification numbers or cards;
 - (I) mother's maiden name;
 - (J) birth, death or marriage certificates;
 - (K) electronic identification numbers;
 - (L) electronic signatures;
 - (M) any financial number, or password that can be used to access a person's financial resources, including, but not limited to, checking or savings accounts, credit or debit card information, demand deposit or medical information; and
 - (N) passwords, usernames or other log-in information that can be used to access a person's personal electronic content, including, but not limited to, content stored on a social networking website; and
- (3) "social networking website" means a privacy-protected internet website which allows individuals to construct a public or semi-public profile within a bounded system created by the service, create a list of other users with whom the individual shares a connection within the system and view and navigate the list of users with whom the individual shares a connection and those lists of users made by others within the system.

Kansas appellate courts have wrestled with the definition of the phrase "*in order to receive any benefit*" (emphasis added) in K.S.A. 21-6107(a)(1):

(a) obtaining, . . . transferring, using . . . any personal identifying information, or document containing the same, belonging to or issued to another person, with the intent to:

(1) Defraud that person, or anyone else, *in order to receive any benefit*.

In *State v. Rivera-Rodriguez*, No. 122,840, WL 2386063, 488 P.3d 527 (2021), (unpublished opinion), the Kansas Court of Appeals reviewed cases which addressed the previous version of Identity Theft. When the statute was amended in 2005, the legislature

replaced the phrase “*with intent to defraud for economic benefit,*” with “*in order to receive any benefit.*” (emphasis added)

“In doing so, ‘the legislature expanded the definition of ‘identity theft’ to criminalize *every* conceivable motive for stealing another’s identity. ... In short, the deletion of the phrase ‘for economic benefit’ and the insertion of the phrase ‘for any benefit’ significantly changed and expanded the context of the identity theft statute.’ *State v. Capps*, No. 105,653, 2012 WL 5973917, at 3 (Kan. App. 2012) (unpublished opinion).

In *State v. Martinez-Perez*, No. 109,383, 2014 WL 2401660, at 1-2 (Kan.App.2014) (unpublished opinion), the Kansas Court of Appeals assessed the defendant’s arguments against the updated version of the statute:

Relying on [State v.] *Johnson*, [40 Kan.App. 2d 196, (2008)] Martinez-Perez argues that mere possession of another’s personal information did not demonstrate an intent to defraud. But [Martinez-Perez] ignores the fact that he did not merely possess the fake driver’s license. To the contrary, he offered it to the officer and claimed it was his. He explicitly misidentified himself as Francisco Sotelo. *The State presented sufficient evidence that Martinez-Perez intended to defraud the officer by leading him to believe that he was Francisco Sotelo so that he would not suffer the consequences of being found to have a previous DUI conviction and being found to be in this country illegally.* [Citations omitted.]” 2014 WL 2401660, at *2.

Since the statute was amended, Kansas appellate courts have held that the motive does have to be merely economic to satisfy the statute, so long as “any benefit” is actually derived by the actor.

K.S.A. 21-5917. False impersonation; aggravated false

impersonation. (a) False impersonation is representing oneself to be a *public officer* (emphasis added), public employee or a person licensed to practice or engage in any profession or vocation for which a license is required by the laws of the state of Kansas, with knowledge that such representation is false.

(b) Aggravated false impersonation is falsely representing or impersonating another and in such falsely assumed character:

- (1) Becoming bail or security, or acknowledging any recognizance, or executing any bond or other instrument as bail or security, for any party in any proceeding, civil or criminal, before any court or officer authorized to take such bail or security;
- (2) confessing any judgment;
- (3) acknowledging the execution of any conveyance of property, or any other instrument which by law may be recorded; or

(4) doing any other act in the course of a suit, proceeding or prosecution whereby the person who is represented or impersonated may be made liable to the payment of any debt, damages, costs or sum of money, or such person's rights or interests may be in any manner affected.

(c) (1) False impersonation is a class B nonperson misdemeanor.

(2) Aggravated false impersonation is a severity level 9, nonperson felony.

III

Regarding the conduct of law enforcement officers/ agents

K.S.A. 21-5824. Making false information. (a) Making false information is making, generating, distributing or drawing, or causing to be made, generated, distributed or drawn, any written instrument, electronic data or entry in a book of account with knowledge *that such information falsely states or represents some material matter* (emphasis added) or is not what it purports to be, and with intent to defraud, obstruct the detection of a theft or felony offense or induce official action.

See *State v. Gotti*, 273 Kan. 459, 461, 43 P.3d 812 (2002) (later abrogated on other grounds by *State v. Ward*, 307 Kan. 245, Syl. 2 [2018], regarding the distinction between the crimes of making a false information and forgery).

K.S.A. 21-5905. Interference with the judicial process. (a) Interference with the judicial process is:

(1) Communicating with any judicial officer in relation to any matter which is or may be brought before such judge, magistrate, master or juror with intent to improperly influence such officer;

(2) committing any of the following acts, with intent to influence, impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecutor on any matter then pending before the officer or prosecutor:

(A) Communicating in any manner a threat of violence to any judicial officer or any prosecutor;

(B) harassing a judicial officer or a prosecutor by repeated vituperative communication; or

(C) picketing, parading or demonstrating near such officer's or prosecutor's residence or place of abode;

(3) picketing, parading or demonstrating in or near a building housing a judicial officer or a prosecutor with intent to impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecutor on any matter then pending before the officer or prosecutor;

(4) knowingly accepting or agreeing to accept anything of value as consideration for a promise:

(A) Not to initiate or aid in the prosecution of a person who has committed a crime; or

(B) to conceal or destroy evidence of a crime;

(5) *knowingly or intentionally in any criminal proceeding or investigation (emphasis added):*

(A) *Inducing a witness or informant to withhold or unreasonably delay in producing any testimony, information, document or thing;*

(B) *withholding or unreasonably delaying in producing any testimony, information, document or thing after a court orders the production of such testimony, information, document or thing;*

(C) *altering, damaging, removing or destroying any record, document or thing, with the intent to prevent it from being produced or used as evidence; or (emphasis added).*

(D) *making, presenting or using a false record, document or thing with the intent that the record, document or thing, material to such criminal proceeding or investigation, appear in evidence to mislead a justice, judge, magistrate, master or law enforcement officer;*

(6) *when performed by a person summoned or sworn as a juror in any case:*

(A) *Intentionally soliciting, accepting or agreeing to accept from another any benefit as consideration to wrongfully give a verdict for or against any party in any proceeding, civil or criminal;*

(B) *intentionally promising or agreeing to wrongfully give a verdict for or against any party in any proceeding, civil or criminal; or*

(C) *knowingly receiving any evidence or information from anyone in relation to any matter or cause for the trial of which such juror has been or will be sworn, without the authority of the court or officer before whom such juror has been summoned, and without immediately disclosing the same to such court or officer;*
or

(7) *knowingly making available by any means personal information about a judge or the judge's immediate family member, if the dissemination of the personal information poses an imminent and serious threat to the judge's safety or the safety of such judge's immediate family member, and the person making the information available knows or reasonably should know of the imminent and serious threat.*

(b) *Interference with the judicial process as defined in:*

(1) *Subsection (a)(1) is a severity level 9, nonperson felony;*

(2) *subsection (a)(2) and (a)(3) is a class A nonperson misdemeanor;*

(3) *subsection (a)(4) is a:*

(A) *Severity level 8, nonperson felony if the crime is a felony; or*

(B) *class A nonperson misdemeanor if the crime is a misdemeanor;*

(4) *subsection (a)(5) is a:*

(A) *Severity level 8, nonperson felony if the matter or case involves a felony; or*

(B) *class A nonperson misdemeanor if the matter or case involves a misdemeanor;*

(5) *subsection (a)(6)(A) is a severity level 7, nonperson felony;*

(6) *subsection (a)(6)(B) or (a)(6)(C) is a severity level 9, nonperson felony; and*

(7) *subsection (a)(7) is a:*

(A) *Class A person misdemeanor, except as provided in subsection (b)(7)(B); and*

(B) *severity level 9, person felony upon a second or subsequent conviction.*

(c) *Nothing in this section shall limit or prevent the exercise by any court of this state of its power to punish for contempt.*

(d) *As used in this section:*

- (1) "Immediate family member" means a judge's spouse, child, parent or any other blood relative who lives in the same residence as such judge.
- (2) "Judge" means any duly elected or appointed justice of the supreme court, judge of the court of appeals, judge of any district court of Kansas, district magistrate judge or municipal court judge.
- (3) "Personal information" means a judge's home address, home telephone number, personal mobile telephone number, pager number, personal e-mail address, personal photograph, immediate family member photograph, photograph of the judge's home, and information about the judge's motor vehicle, any immediate family member's motor vehicle, any immediate family member's place of employment, any immediate family member's child care or day care facility and any immediate family member's public or private school that offers instruction in any or all of the grades kindergarten through 12.

The case law regarding violations of K.S.A. 21-5905, *Abuse of Judicial Process*, is very limited in Kansas. In *State v. Lessman*, 2021 WL 2385816, 487 P.3d 382 (2021) (unpublished), the Kansas Court of Appeals considered the sufficiency of the evidence offered by the state to secure the conviction of Mr. Lessman under §(a)(1) of the statute.

The *Lessman* court offered the following analysis,

Under the relevant subsection, interference with the judicial process is “[c]ommunicating with any judicial officer in relation to any matter which is or may be brought before such judge, magistrate, master or juror with intent to improperly influence such officer.” K.S.A. 2020 Supp. 21-5905(a)(1). The phrase “with intent to improperly influence a judicial officer” covers a broad range of conduct “*but is limited to conduct affecting a governmental function, the administration of justice by a judicial officer in relation to any matter which is or may be brought before him as a judicial officer.*” (emphasis added) *State v. Torline*, 215 Kan. 539, 542, 527 P.2d 994 (1974). “The common meaning of ‘improperly influence’ is to impermissibly change someone's behavior or thinking. See American Heritage Dictionary 884 (5th ed. 2011) (defining ‘improper’ as ‘[n]ot consistent with established ... rule’); American Heritage Dictionary 901 (5th ed. 2011) (defining ‘influence’ as ‘to change the behavior or thinking of someone; sway’).” *State v. Matei*, No. 110,003, 2015 WL 249680, at *12 (Kan. App. 2015) (unpublished opinion). But, when the attempted influence directed against a judicial officer comes after the final termination of the proceedings, there is no attempt to improperly influence a judicial officer. *Torline*, 215 Kan. at 543.

K.S.A. 21-5903. Perjury. (a) Perjury is *intentionally and falsely*:

(1) Swearing, testifying, affirming, declaring or subscribing to any material fact *upon any oath or affirmation legally administered in any cause*, (emphasis added) matter or proceeding before any court, tribunal, public body, notary public or other officer authorized to administer oaths;

(2) subscribing as true and correct under penalty of perjury any material matter in any declaration, verification, certificate or statement as permitted by K.S.A. 53-601, and amendments thereto; or

(3) subscribing as true and correct under the penalty of perjury the affidavit as provided in K.S.A. 25-1121(c), and amendments thereto.

(b) Perjury is a:

(1) Severity level 9, nonperson felony, except as provided in subsection (b)(2); and

(2) severity level 7, nonperson felony if the false statement is made upon the trial of a felony charge.

K.S.A. 21-6002. Official misconduct. (a) Official misconduct is any of the following acts committed by a public officer or employee in the officer or employee's public capacity or under color of the officer or employee's office or employment:

(1) Knowingly using or authorizing the use of any aircraft, as defined by K.S.A. 3-201, and amendments thereto, vehicle, as defined by K.S.A. 8-1485, and amendments thereto, or vessel, as defined by K.S.A. 32-1102, and amendments thereto, under the officer's or employee's control or direction, or in the officer's or employee's custody, exclusively for the private benefit or gain of the officer or employee or another;

(2) knowingly failing to serve civil process when required by law;

(3) *using confidential information acquired in the course of and related to the officer's or employee's office or employment for the private benefit or gain of the officer or employee or another or to intentionally cause harm to another*;

(4) except as authorized by law, with the intent to reduce or eliminate competition among bidders or prospective bidders on any contract or proposed contract:

(A) Disclosing confidential information regarding proposals or communications from bidders or prospective bidders on any contract or proposed contract;

(B) accepting any bid or proposal on a contract or proposed contract after the deadline for acceptance of such bid or proposal; or

(C) altering any bid or proposal submitted by a bidder on a contract or proposed contract;

(5) except as authorized by law, knowingly destroying, tampering with or concealing evidence of a crime; or

(6) knowingly submitting to a governmental entity a claim for expenses which is false or duplicates expenses for which a claim is submitted to such governmental entity, another governmental or private entity.

(b) (1) Official misconduct as defined in:

(A) Subsections (a)(1) through (a)(4) is a class A nonperson misdemeanor;

(B) subsection (a)(5) is a:

(i) Severity level 8, nonperson felony if the evidence is evidence of a crime which is a felony; and

(ii) class A nonperson misdemeanor if the evidence is evidence of a crime which is a misdemeanor; and

(C) subsection (a)(6) if the claim is:

(i) \$25,000 or more is a severity level 7, nonperson felony;

(ii) at least \$1,000 but less than \$25,000 is a severity level 9, nonperson felony; and

(iii) less than \$1,000 is a class A nonperson misdemeanor.

(2) Upon conviction of official misconduct a public officer or employee shall forfeit such officer or employee's office or employment.

(c) The provisions of subsection (a)(1) shall not apply to any use of persons or property which:

(1) At the time of the use, is authorized by law or by formal written policy of the governmental entity; or

(2) constitutes misuse of public funds, as defined in K.S.A. 21-6005, and amendments thereto.

(d) As used in this section, "confidential" means any information that is not subject to mandatory disclosure pursuant to K.S.A. 45-221, and amendments thereto.

21-5413. Battery; aggravated battery; battery against certain persons; aggravated battery against certain persons. (a) Battery is:

(1) Knowingly or recklessly causing bodily harm to another person; or

(2) knowingly causing physical contact with another person when done in a rude, insulting or angry manner.

IV

Re: Search Warrants and the Warrant Requirement

The 4th Amendment to the US Constitution: protects the "*right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*"

Note: Kansas courts interpret § 15 of the Kansas Constitution Bill of Rights to provide the same protection from unlawful government searches and seizures as the Fourth Amendment to the United States Constitution. See *State v. Neighbors*, 299 Kan. 234, 239 (2014).

A search occurs under the *Fourth Amendment* when: (1) the government obtains

information by physically intruding on a constitutionally protected area, *i.e.*, persons, houses, papers, or effects [citation omitted] *or* (2) invades ‘a subjective expectation of privacy that society recognizes as reasonable.’ See *Kyllo v. United States*, 533 U.S. 27, 33 (2001) (citing *Katz v. [United States]*, 389 U.S., [347,] 361 [1967]).” *State v. Talkington*, 301 Kan. 453 (2015).

An officer’s conclusory assertions in a search warrant application are insufficient to support probable cause:

Because a search warrant requires an evidentiary foundation, law enforcement officers may not rely on conclusory assertions or opinions unmoored from specific factual representations. The facts need not be in a form admissible at trial—hearsay and other secondhand information may suffice, if the overall circumstances demonstrate reliability. But judicial officers cannot provide the independent check contemplated in the Fourth Amendment if they are asked to review conclusions rather than facts.

State v. Althaus, 49 Kan. App. 2d 210, Syl. 9 (2013).

A defendant has the ability to challenge the accuracy of the information contained within a search warrant application or information left out of said application. See *Franks v. Delaware*, 438 U.S. 154 (1978). A successful challenge can lead to the suppression of some or all of the evidence collected.

As a general matter, the remedy for an invalid search warrant is the suppression of evidence pursuant to the “exclusionary rule.” In situations where the search warrant application was “invalid on its face,” the remedy may also include the determination that the law enforcement officer(s) responsible for preparing the application are not entitled to qualified immunity. See *Groh v. Ramirez*, 540 U.S. 551 Syl. 3, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004).

While the United States Supreme Court has permitted exceptions to the exclusionary rule (ex: good faith) when determining whether to exclude evidence,

appellate treatment will turn on the following issue:

[w]ould a reasonable law enforcement officer have recognized the affidavit to be so lacking in indicators of probable cause that he or she could not have held a good-faith belief in the validity of the warrant, notwithstanding the issuing judge's decision to sign it?

State v. Hoeck, 284 Kan. 441, 465, Syl. 1 (2007).

Summarized, poorly drafted applications (affidavits) presented for a search warrant or warrant applications that are based on an incomplete investigation do not, standing alone, carry criminal liability. The remedy in these situations is suppression through the exclusionary rule of any evidence wrongfully obtained.

Conversely, where the law enforcement agent who sought a warrant intentionally, knowingly or recklessly provided misleading information to the court or swore to facts known to be untrue, those actions may constitute one or more crimes defined by state statute.

V

Search Warrant and the Role of the Prosecutor

K.S.A. 22-2502, **Search Warrants; issuance; proceedings authorized . . .**

(a) A search warrant shall be issued only upon the oral or written statement, including those conveyed or received by electronic communication, of any person under oath or affirmation which states facts sufficient to show probable cause that a crime has been, is being or is about to be committed and which particularly describes a person, place or means of conveyance to be searched and things to be seized. Any statement which is made orally shall be either taken down by a certified shorthand reporter, sworn to under oath and made part of the application for a search warrant, or recorded before the magistrate from whom the search warrant is requested and sworn to under oath. Any statement orally made shall be reduced to writing as soon thereafter as possible. If the magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the magistrate may issue a search warrant for . . .

K.S.A. 22-2502 makes no reference to the role, if any, for the local prosecutor in the preparation, review or execution of search warrants. The American Bar Association promulgates non-binding standards of practice as recommendations to practitioners. Those standards—see 26-2.8 (d)(f)(g) (h) and (i)—suggest that a prosecutor should review

warrant applications before they go to the judge.

VI
Jurisdiction/ Authority of Law Enforcement Agencies

K.S.A. 22-2401a, Jurisdiction of certain law enforcement officers . . .

(a)(1) Law enforcement officers employed by consolidated county law enforcement agencies or departments and sheriffs and their deputies may exercise the powers and authority of law enforcement officers anywhere within their county.

(2) Law enforcement officers employed by any city may exercise the powers and authority of law enforcement officers anywhere within the city limits of the city employing them and outside of such city when on property owned or under the control of such city.

...

(h) All law enforcement officers not otherwise provided statewide jurisdiction may exercise the powers and authority of law enforcement officers anywhere when:

(1) A request for assistance has been made by law enforcement officers from the area for which assistance is requested;

(2) in fresh pursuit of a person;

(3) transporting persons in custody to an appropriate facility, wherever such facility may be located; and

(4) investigating a crime that occurred within the law enforcement officer's jurisdiction, with appropriate notification to and coordination with a local law enforcement agency with jurisdiction where the investigation is to be conducted.

K.S.A. 74-5602, provides definitions within the Kansas Law Enforcement Training Act, including,

...

(f) "Law enforcement" means the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof.

(g)(1) "Police officer" or "law enforcement officer" means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof.

(2) "Police officer" or "law enforcement officer" includes, but is not limited to: The sheriff, undersheriff and full-time or part-time salaried deputies in the sheriff's office in each county; deputy sheriffs deputized pursuant to K.S.A. 19-2858, and amendments thereto; conservation officers of the Kansas department of wildlife and parks; university police officers, as defined in K.S.A. 22-2401a, and amendments thereto; campus police officers, as defined in K.S.A. 22-2401a, and amendments thereto; law enforcement agents of the director of alcoholic beverage

control; law enforcement agents designated by the secretary of revenue pursuant to K.S.A. 75-5157, and amendments thereto; law enforcement agents of the Kansas lottery; law enforcement agents of the Kansas racing commission; deputies and assistants of the state fire marshal having law enforcement authority; capitol police, existing under the authority of K.S.A. 75-4503, and amendments thereto; special agents of the department of corrections; special investigators designated by the secretary of labor; and law enforcement officers appointed by the adjutant general pursuant to K.S.A. 48-204, and amendments thereto; railroad policemen appointed pursuant to K.S.A. 66-524, and amendments thereto; school security officers designated as school law enforcement officers pursuant to K.S.A. 72-6146, and amendments thereto; the manager and employees of the horsethief reservoir benefit district pursuant to K.S.A. 82a-2212, and amendments thereto; and the director of the Kansas commission on peace officers' standards and training and any other employee of such commission designated by the director pursuant to K.S.A. 74-5603, and amendments thereto, as a law enforcement officer. "Police officer" or "law enforcement officer" includes any officer appointed or elected on a provisional basis.

VII

District Judges and District Magistrate Judges

Kansas state courts are divided into 31 separate "judicial districts." These districts have a combination of District Court Judges, see K.S.A. 20-334, and District Magistrate Judges, see K.S.A. 20-302b, for authority.

K.S.A. 20-334. Qualifications of judges of the district court. (a) Subject to the provisions of K.S.A. 20-2909, and amendments thereto, any person who is elected, retained in office or appointed as a district judge shall:

- (1) Have been regularly admitted to practice law in the state of Kansas;
- (2) be a resident of the judicial district for which elected or appointed to serve at the time of taking the oath of office and shall maintain residency in the judicial district while holding office; and
- (3) for a period of at least five years, have engaged in the active practice of law as a lawyer, judge of a court of record or any court in this state, full-time teacher of law in an accredited law school or any combination thereof.

(b) Any person who is elected, retained in office or appointed as a district magistrate judge shall:

- (1) Be a graduate of a high school or secondary school or the equivalent thereof;
- (2) be a resident of the county for which elected or appointed to serve at the time of taking the oath of office and shall maintain residency in the county while holding office; and
- (3) if not regularly admitted to practice law in Kansas, be certified by the supreme court, in the manner prescribed by K.S.A. 20-337, and amendments thereto, as qualified to serve as a district magistrate judge.

K.S.A. 20-302b. District magistrate judges; jurisdiction, powers and duties; appeals.

(a) Subject to assignment pursuant to K.S.A. 20-329, and amendments thereto, a district magistrate judge shall have the jurisdiction and power, in any case in which a violation of the laws of the state is charged, to conduct the trial of traffic infractions, violations of the wildlife and parks laws of this state or rules and regulations adopted thereunder, cigarette or tobacco infractions or misdemeanor charges, to conduct felony first appearance hearings and the preliminary examination of felony charges and to hear misdemeanor or felony arraignments. A district magistrate judge shall have jurisdiction over uncontested actions for divorce. Except as otherwise specifically provided in this section, a district magistrate judge shall have jurisdiction over actions filed under the code of civil procedure for limited actions, K.S.A. 61-2801 et seq., and amendments thereto, and all other civil cases, and shall have concurrent jurisdiction, powers and duties with a district judge.

K.S.A. 20-302b further delineates specific restrictions to a Magistrate Judge's authority (ex: habeas corpus, mandamus, *quo warranto*, et cetera).

District Court Judges must be lawyers and members of the bar. District Court Judges have statewide jurisdiction. The position of Magistrate Judge does not require a law degree. A Magistrate Judge's authority is proscribed by statute, as set forth above.

PERSONS REFERENCED IN THE INVESTIGATION

The following list includes the names and titles (where appropriate) of individuals interviewed as part of this investigation and/or mentioned in the above and foregoing report.

1. Officer John Benavidez - Marion Police Department
2. Brian Bina - Attorney for the City of Marion
3. Kevin Burkholder - City council, Marion
4. Chad Burr - Kansas Department of Revenue
5. Chief Gideon Cody - Chief of Marion Police Department in August of 2023
6. Cheryl Christensen - Support staff, Marion County Attorney's Office
7. Det. Aaron Christner - Marion Co. Sheriff's Office
8. Zach Collette - City council, Marion
9. Lloyd Davies - IT for the City and County of Marion
10. Joel Ensey - Marion County Attorney
11. Deb Gruver - Journalist, Marion County Record
12. Joby Harrison - ASAC, Kansas Bureau of Investigation

13. Ruth Herbel- Marion city council member
14. Zach Hudlin - Marion Police Department, current acting chief
15. Karen Hurt - Support staff, Marion County Attorney's office
16. Robert Jacobs - Assistant Director of the Kansas Bureau of Investigations
17. Deputy Steven Janzen - Marion County S.O.
18. Brogan Jones - Marion City Administrator
19. Jerry Kline - City council, Marion
20. Rep. Jake LaTurner - U.S. House of Representatives, Kansas 2nd Congressional District
21. Todd Leeds - Agent, Kansas Bureau of Investigation
22. Laura Legg - Support staff, Marion County Courts
23. Pam Maag - resident of Marion, Kansas
24. Roger Maag - Husband of Pam Maag
25. David Mayfield - Mayor City of Marion
26. Tony Mattivi - Director of the Kansas Bureau of Investigation
27. Eric Meyer - Editor, Marion County Record
28. Joanne Meyer - Former newspaper editor Marion County Record
29. Chris Mercer - Part-time Marion Police Officer/ Fire Investigator
30. Laura Meyers - Wife or girlfriend of Officer Jonathan Benavidez
31. Kari Newell - owner/operator of Karla's Kitchen, Marion, Kansas
32. Ryan Newell - Kari Newell's ex-husband
33. Bethanie Popejoy - Special Agent in Charge (SAC) Kansas Bureau of Investigation
34. Susan Robson - District Court Judge, 8th Judicial District
35. Ben Sexton - Chief Administrative District Judge, 8th Judicial District
36. Ted Smith - KDOR General Counsel / Legal Services Bureau
37. Jeff Soyez - MNSO Sheriff
38. Larry Starkey - MNSO Undersheriff
39. Michael Struwe - Agent Colorado Bureau of Investigation
40. Anita Svoboda - Support staff, Marion County Courts
41. Laura Viar - District Magistrate Judge, 8th Judicial District
42. John Zamora - Agent Colorado Bureau of Investigation
43. Phyllis Zorn - journalist, Marion County Record

FACTUAL SUMMARY/ TIMELINE

The facts set forth below are meant to summarize the contents of interviews, body camera videos, emails, forensic reports, and investigator's reports. Where statements are placed in quotes, the content came directly from transcripts of interviews or directly from reports, as indicated.

Tuesday, August 1, 2023

On August 1, 2023, Chief Gideon Cody of the Marion, Kansas, Police Department

attended a “meet-and-greet” with Kansas Representative Jake LaTurner at a restaurant in Marion, Kansas, *Karla’s Kitchen*, 301 E. Santa Fe Marion. The editor of the Marion County Record, Eric Meyer, and a reporter employed by the paper, Phyllis Zorn, were present. The owner of the restaurant, Kari Newell, wanted Mr. Meyer and Ms. Zorn to leave. Ms. Newell ultimately asked Marion Chief of Police Gideon Cody to remove the two reporters from her restaurant. Mr. Meyer and Ms. Zorn left the establishment after being asked to leave.

Mr. Meyer was later interviewed by CBI investigators. He recalled that when Chief Cody asked him and Ms. Zorn to leave, it was the first time he had met Chief Cody.

Mr. Meyer explained to the investigators that when Marion Police Chief Gideon Cody was first offered the job in Marion in the spring of 2023, the newspaper received anonymous complaints from people who had worked with Chief Cody during his previous employment with the Kansas City, Missouri, Police Department. The Marion Record was unable to get on-the-record confirmation of these complaints, so their reporter, Deb Gruver, approached Chief Cody for comment. He in turn threatened to sue for libel. Without on-the-record confirmation of the allegations, Mr. Meyer chose to share the concerns with the city council, rather than publish a story. Mr. Meyer recalled that councilmember, Zach Collett, “basically told us to mind our own business.”

Ms. Gruver was subsequently interviewed by CBI agents. She told the agents that the newspaper had raised concerns regarding Chief Cody’s background around April 21st after he was interviewed for the position. Ms. Gruver called candidate Cody and he responded, “I’m a private person,” and the phone went dead. Ms. Gruver said she then contacted Zach Collett, Marion city council member, to relay some of the concerns she had been told about Chief Cody. Ms. Gruver mirrored Mr. Meyer’s memory of the interaction,

saying that Mr. Collett told the paper “to mind our own business.”

Chief Cody was law enforcement certified through Kansas City, Missouri, but had not yet undergone certification in Kansas through CPOST. Law enforcement officers in Kansas can be hired on a temporary basis on the condition that they take the next available test or training (depending on their employment history). Email communication on August 1, 2023, from the Kansas Law Enforcement Training Center (KLETC) advised “all testing for Reciprocity and Challenge exam [had] been suspended until September...”

Wednesday, August 2, 2023

In August of 2023, Ms. Newell and her estranged husband, Ryan Newell, were in the process of divorce. Mr. Newell utilized the web site of the Kansas Department of Revenue (“KDOR”) to obtain a copy of Ms. Newell’s driving record. Mr. Newell knew his estranged wife’s personal identifying information which he entered to access KDOR data and print a copy of her driving record. Mr. Newell told CBI investigators that he accessed the image of the driving record without having to pay a fee, affirming who he was or stating a reason for accessing the record.

Mr. Newell said he had been checking the status of his ex-wife’s driver’s license for several months because he was upset that he had to pay her car insurance, tags and taxes from the temporary court order in the divorce proceeding despite knowing she did not have a valid driver’s license.

Mr. Newell subsequently texted an image of Ms. Newell’s driving record to a friend, Pamela Maag. According to Mr. Newell, Mrs. Maag later shared the image with the reporter from the Marion Record, Phyllis Zorn. Mr. Newell believed that Mrs. Maag also shared the record with Marion city council member, Ruth Herbel.

Ryan Newell told investigators that he was never contacted by local Marion law

enforcement prior to the execution of the warrants on August 11, 2023. His first interaction with a law enforcement agent was when he later spoke to KBI Agent Todd Leeds in what Mr. Newell believed was “almost October.”

Pamela Maag was subsequently interviewed by CBI agents. She told them that Ms. Newell had previously told her that she (Ms. Newell) intended to apply for a liquor license for her place of business in Marion, Kansas. When Mrs. Maag informed Ms. Newell that she could not obtain the license without a valid driver’s license, it led to a disagreement. Ryan Newell later sent Mrs. Maag the documentary record of Ms. Newell’s driving record, obtained from KDOR. Mrs. Maag told the agents, she knew “their website is public record.” Mrs. Maag sent a screen shot of the document to city councilwoman, Ruth Herbel, and to Phyllis Zorn at the newspaper. Mrs. Herbel later told investigators that she (Mrs. Herbel) asked Mrs. Maag for a copy, after seeing some discussion about the document on Facebook. Mrs. Maag said she sent Mrs. Herbel the image by Facebook Messenger.

Ms. Newell was aware of the Facebook exchange between Ruth Herbel, Pam Maag and Phyllis Zorn. Ms. Newell made screen shots of the Facebook exchange and later forwarded them by text to Chief Cody on August 9, 2023.

Mrs. Maag explained that she sent the image “because of the fact of, um, Kari was applying or asking the city for their permission.” She added,

“All of a sudden, it kinda hit me, and I thought, you know what, I’m just gonna send this. Cause the council meeting was gonna be on Monday, and I thought, you know, this is kind of an FYI.”

Mrs. Maag, later told CBI agents that no one in local law enforcement spoke to her prior to the execution of warrants on August 11, 2023. She said, if they had, she would have told them she sent the document, because she “knew” it was a publicly accessible

document.

As has now been widely reported, the printed record of Ms. Newell's driving record contained an entry that Ms. Newell had been convicted of a misdemeanor traffic offense in violation of chapter 8 of the Kansas Statutes Annotated more than ten years prior and that her driving privileges had been suspended as a result.

Mr. Meyer told investigators that when Ms. Zorn received the image from Mrs. Maag, his initial thought was that someone had either stolen Ms. Newell's mail or that it had mistakenly gone to Ryan Newell, as he knew Ryan and Kari Newell were going through a divorce. He instructed Ms. Zorn to inquire of Mrs. Maag where she obtained the image. Mrs. Maag told Ms. Zorn that it was readily available on the website.

Mr. Meyer said that on August 4, 2023, Ms. Zorn contacted the KDOR and "said this is what we got, where do you find it on the website?" The KDOR employee explained to Ms. Zorn how to find the information on its site. After contacting an attorney for the Kansas Press Association, Mr. Meyer said they decided the newspaper was in legal possession of the document.

Ms. Zorn was subsequently interviewed by CBI agents and confirmed Mr. Meyer's account. She received the driving record from Mrs. Maag and then contacted the KDOR by phone when Mr. Meyer told her to confirm the document's authenticity. Ms. Zorn contacted the KDOR representative who explained to her how to access the information. Ms. Zorn looked at the document by way of the free (no cost) access on the KDOR website, which was one of two options the KDOR representative had shown her. Ms. Zorn signed in under her own name then entered the information contained on the document sent to her by Mrs. Maag. She was required to confirm the following:

I will use the information requested in a manner that is specifically authorized by Kansas law and is related to the operation of a motor vehicle or public safety. (See section VI on the front of this form).

After that, the KDOR website revealed a copy of Ms. Newell's driving record. Ms. Zorn then closed out of the site. She explained that she then decided she should have printed a copy for the newspaper's records so she went back into the site. When she did, she said the site auto-filled the form including the name, Kari Newell. The site then took her again to Ms. Newell's driving record, which Ms. Zorn printed for her records.

Ultimately, Ms. Zorn and Mr. Meyer decided not to run a story about Ms. Newell's driving record. Ms. Zorn said they were suspicious that Ryan Newell may have been behind the sharing of the document in "an attempt to draw us into the contentious divorce."

Friday August 4, 2023

After receiving a copy of Ms. Newell's driving record from Pam Maag, Ruth Herbel, emailed a copy of the image to Brogan Jones, the Marion City Administrator on August 4, 2023.

Mrs. Herbel was interviewed by CBI agents on December 7, 2023. She told investigators that after receiving the image of Ms. Newell's driving record from Pam Maag, she (Mrs. Herbel) forwarded the image to Mr. Jones because Ms. Newell's pending application for a "caterer and liquor license" was on the agenda for the Marion city council meeting set the evening of August 7, 2023. Mrs. Herbel believed the driving record was potentially relevant to the issuance of the license, though she acknowledged she later came to understand that the State of Kansas actually controlled the issuance of liquor licenses. Thinking in the moment that the city was solely responsible for the issuance of the license, Mrs. Herbel explained her rationale to CBI investigators:

“ . . . when I got the screenshot, which was on August 4th, I sent it to Brogan on, at 5:17 August the 4th, and said maybe should have Cody, check this out. Because there is a state statute that says if you’ve had a DUI within 10 years, you cannot get a liquor license. And so I was concerned on our part that we would be issuing her one without knowing the facts. And I think I said in one of the emails, I said, uh, we’ll need to approach this very cautiously. But nowhere will you find that I said deny, deny, deny that [Chief] Cody has in all of the warrants, the affidavits, and everything else, that I said I wanted to deny her liquor license or renewal of her liquor license. She never had a liquor license to start with. And so I couldn’t say deny a renewal of her liquor license. It’s just a total mess to start with.”

Mrs. Herbel sent several follow up emails to Mr. Jones in which she identified state statutes that she believed would prohibit Ms. Newell from obtaining the liquor license, including an email at 4:27 p.m. on the 4th day of August in which she cited K.S.A. 41-330.

Mrs. Herbel was not contacted by local law enforcement prior to the issuance and execution of the warrants on August 11, 2023. She said that if they had asked her how she obtained the driving record she would have “told em.” She explained her only interaction with local law enforcement was on August 11, 2023, when the warrant for her house was executed. Chief Cody’s body worn camera did record their interaction. Mrs. Herbel did agree to speak to Chief Cody and she did explain how she obtained the document.

At 4:44 p.m., on August 4, 2023, Brogan Jones sent an email to Mayor David Mayfield to tell him he had received email from Ruth Herbel containing an image of Ms. Newell’s driving record. Mr. Jones wrote,

“First I want to state that Chief/PD will not be looking into this. Secondly the State is the oversight for this and will conduct all this type of research. We as a city need to stay out of this ‘hear say’ or whatever else you want to call it. We will go forward like any other individual and or business and let the State handle their business.”

At 5:17 p.m., Mrs. Herbel emails Brogan Jones a copy of Ms. Newell’s KDOR

driving record.

At 6:52 p.m. on August 4, 2023, Eric Meyer, the Editor of the Marion County Record, sent an email to Chief Cody and Marion County Sheriff, Jeff Soyez. In the email, Mr. Meyer explained that his newspaper had received a copy of Kari Newell's department of revenue driving record from a "source" but, after taking steps to verify the authenticity of the document, had elected not to publicize the document or the facts therein. Mr. Meyer's email did not contain a copy or image of Ms. Newell's driving record. As detailed above, Mrs. Maag later acknowledged she was the "source" that provided the document to the newspaper.

Mr. Meyer's email also stated that he was notifying the Chief and Sheriff because the newspaper's source "implied that she obtained the document because of 'connections'" and Mr. Meyer thought it might have been obtained illegally—though he added he was fairly certain it was obtained by Mr. Newell. Finally, Mr. Meyer raised the question as to why Ms. Newell had never been stopped by local law enforcement for driving without a valid license.

Mr. Meyer explained to CBI investigators his rationale for sending the email to Sheriff Soyez and Chief Cody:

"Phyllis [Zorn] figured out from KDOR, uh, how to get the document and, and went in and looked at it. She didn't even print the version that she looked at, just looked at it and compared it with the printout that she'd gotten from, from, uh, from Pam Maag. Uh, and at that point, I decided okay, we think this is how she got it. We think there's an allega,[tion], but the person who gave it to us was very sketchy about how she had gotten it, un, and it might have been that she got it another way and then there was her allegation that the cops were aware of this and not doing anything about it, I'm gonna let the sheriff and the police chief know. So I wrote a letter to the sheriff and the police chief. I did not disclose Pam Maag's identity. I did not disclose Kari Newell's identity."