No. 12-108061-A

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

**STATE OF KANSAS,**
Plaintiff/Appellee

vs.

**HENRY PETERSON-BEARD,**
Defendant/Appellant



# BRIEF OF APPELLEE

Appeal from the District Court of Saline County, Kansas
Honorable Rene S. Young, District Court Judge
District Court Case No. 11 CR 504

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# BRIEF OF APPELLEE

Appeal from the District Court of Saline County, Kansas
Honorable Rene S. Young, District Court Judge
District Court Case No. 11 CR 504

## NATURE OF THE ACTION

The Defendant, Henry Peterson-Beard, pled guilty to Rape, a Jessica's Law offense. The district court departed to the Kansas Sentencing Guidelines and granted the defendant a durational departure to 78 months with the Department of Corrections. The district court also imposed lifetime offender registration. Defendant appeals from his sentence.

## STATEMENT OF THE ISSUE

**THE DEFENDANT'S LIFETIME OFFENDER REGISTRATION DOES NOT VIOLATE SECTION 9 OF THE KANSAS CONSTITUTION BILL OF RIGHTS OR THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND SHOULD BE UPHELD.**

## STATEMENT OF FACTS

S.W., a thirteen-year old child, met the defendant, a nineteen-year old, on facebook around May 1, 2011. S.W. and the defendant communicated back and forth over facebook, and during those communications, S.W. advised the defendant that she was thirteen years old. On May 9, 2011, the defendant picked S.W. up and took her to his residence. The defendant and S.W. had sexual intercourse. (Vol. 1, p. 14).

The defendant admitted to officers that he knew that S.W. was thirteen from his first contact with her on facebook. Defendant further admitted that he picked S.W. up and took her back to his residence. Defendant said that while at his residence, he put his finger inside S.W.'s vagina, put on a condom and put his penis in her vagina. Defendant said he had sexual intercourse with S.W. until he ejaculated. The defendant told officers that he knew what he was doing with S.W. was wrong. (Vol. 1, p. 14).

In the victim impact statement, S.W. said that after the defendant and she arrived at the defendant's house, the defendant quickly removed her clothing, and the victim felt like her head was spinning and didn't realized what happened until it was over. S.W. advised that she felt confused about what happened and felt that she was trapped in a situation and unable to stop it. S.W. advised that on a subsequent occasion, the defendant picked her up near her house and when he realized S.W.'s mother was following them, he pushed S.W. out of the car. The defendant texted S.W. and told her not to go to the police. The victim reported that since the offense, she had difficulty trusting people and had sought counseling as a result of the offense.[1]

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[1] The Appellee has filed a Motion for Additions to the Record to include the Addit to the Presentence Report which included the victim impact statement.

The defendant was charged with Rape, pursuant to K.S.A. 21-3502(a)(2), an offgrid person felony. (Vol. 1, pp. 12-13). The defendant pled guilty to Rape. (Vol. 1, pp. 33-38; Vol. 11, p. 12).

The defendant filed a Motion to Declare Lifetime Registration Unconstitutional. (Vol. 1, pp. 56-57). The defendant adopted all of the arguments that he asserted in his Motion to Declare Life Sentence Unconstitutional. (Vol. 1, pp. 39-50, 56).

The district court granted the defendant a departure to the Kansas Sentencing Guidelines and further departed durationally and imposed a sentence of 78 months with the Department of Corrections. (Vol. 1, pp. 99-108; 110-119; Vol. 16, pp. 64-66).

The district court considered the defendant's argument that lifetime offender registration constituted cruel and unusual punishment pursuant to the Eighth Amendment to the United State's Constitution as well as Section 9 of the Kansas Constitution Bill of Rights. In addressing the first State v. Freeman factor, the district court noted that the defendant pled guilty to rape. Additionally, the court found that the defendant had met the victim on facebook and had been advised by the victim that she was thirteen years old. (Vol. 13, p. 12). The court found that the defendant was nineteen years old at the time of the rape and had acknowledged to officers that he knew what he was doing was wrong. (Vol. 13, pp. 12-13).

The court also noted the victim impact statement in which S.W. reported that after she and the defendant arrived at his house, the defendant immediately started taking off S.W.'s clothing, and S.W. felt confused, trapped and unable to stop it. (Vol. 13, pp. 13-14). The district court also noted that rape is considered a sexually violent crime. The court further found that the defendant was solely culpable for any resulting injuries to the

victim, including psychological or emotional. The district court addressed the penological purposes of lifetime offender registration and found that it serves a legitimate public safety interest by monitoring convicted sex offenders on a regular basis. (Vol. 13, p. 14).

In addressing the second Freeman factor, the district court found that other offenses that required shorter periods of offender registration were not necessarily more serious than the crime of rape involving a thirteen-year old child. In addressing the third Freeman factor, the district court found that the defense had not provided any information to the Court as to other state registration laws. (Vol. 13, p. 15). The district court found that the constitutionality of a statute is presumed, and it is the duty of the court to uphold it if there is any reasonable way to construe the statute as constitutionally valid. The district court found that the legislature has determined that sex offenders pose a unique threat to society such that they should be subject to lifetime offender registration. (Vol. 13, p. 16). Ultimately, the district court found that lifetime registration was not cruel and unusual punishment and should be imposed. (Vol. 13, pp. 16-17).

The defendant appealed from the sentence imposed. (Vol. 1, p. 97).

## ARGUMENT AND AUTHORITIES

### THE DEFENDANT'S LIFETIME OFFENDER REGISTRATION DOES NOT VIOLATE SECTION 9 OF THE KANSAS CONSTITUTION BILL OF RIGHTS OR THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND SHOULD BE UPHELD.

In addressing a claim that a sentence is cruel or unusual, a district court's inquiry must be legal and factual. State v. Woodard, 294 Kan. 717, 720, 280 P.3d 203, 206 (July 13, 2012), as amended July 16, 2012, (citing State v. Ortega-Cadelan, 287 Kan. 157, 160-

61, 194 P.3d 1196 (2008)). These inquiries demand a bifurcated standard of review. "[W]ithout reweighing the evidence, the appellate court reviews the factual underpinnings of the district court's findings under a substantial competent evidence standard, and the district court's ultimate legal conclusion drawn from those facts is reviewed de novo." Woodard, 294 Kan. at 720 (citing State v. Gant, 288 Kan. 76, 80, 201 P.3d 673 (2009) and State v. Woolverton, 284 Kan. 59, 70, 159 P.3d 985 (2007)).

> "The constitutionality of a statute is presumed. All doubts must be resolved in favor of its validity, and before the act may be stricken down it must clearly appear that the statute violates the constitution. In determining constitutionality, it is the court's duty to uphold a statute under attack rather than defeat it. If there is any reasonable way to construe the statute as constitutionally valid, that should be done. A statute should not be stricken down unless the infringement of the superior law is clear beyond a reasonable doubt."

State v. Bryan, 259 Kan. 143, Syl. ¶1, 910 P.2d 212 (1996).

"It is not the duty of this court to criticize the legislature or to substitute its view on economic or social policy; it is the duty of this court to safeguard the constitution." State ex rel. Six v. Kansas Lottery, 286 Kan. 557, 562, 186 P.3d 183 (2008) (as quoted in State v. Woodard, 280 P.3d at 207).

**Section 9 of the Kansas Constitution Bill of Rights**

The defendant argues that his lifetime offender registration violates Section 9 of the Kansas Constitution Bill of Rights which prohibits "cruel or unusual punishment." Kan. Const. Bill of Rights, § 9.

Pursuant to K.S.A. 2010 Supp. 22-4902(c)(1), rape is considered a sexually violent crime. Additionally, rape as set forth in K.S.A. 21-3502(a)(2) is also considered an aggravated offense pursuant to K.S.A. 2010 Supp. 22-4902(h)(1). Pursuant to K.S.A.

2010 Supp. 22-4906(c) and (d)(2), the defendant is required to register as an offender for life.

The State submits that because offender registration is not punitive, defendant's cruel and unusual argument must fail. The United States Supreme Court held that Alaska's Sex Offender Registration Act was nonpunitive and as such, its retroactive application did not violate the Ex Post Facto Clause. Smith v. Doe, 538 U.S. 84, 105-106, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003). Congress adopted the Sex Offender Registration and Notification Act (SORNA) in 2006 as a measure to protect the public from sexual offenders and those who perpetrate sexual offenses against children by implementing a "a comprehensive national system for the registration of those offenders." Pub. L. No. 109-248, 120 Stat. 587 (codified at 42 U.S.C. § 16901, *et. seq.*).

As noted in United States v. W.B.H.. 664 F.3d 848, 854, 2011 U.S. App. LEXIS 24729, 23 Fla. L. Weekly Fed. C 632 (2011), "[t]he legislative history of SORNA supports the conclusion that its purpose is civil and non-punitive." The W.B.H. Court further noted that the intent of Congress was to develop a system to "promote public safety by providing citizens with information about the whereabouts of sex offenders and assisting law enforcement in locating them." W.B.H., 664 F.3d at 854.

Should this Court determine that it is proper for it to consider the defendant's argument that lifetime registration is cruel and unusual punishment, the State submits that lifetime registration for sexual offenders is constitutional.

In State v. Scott, 265 Kan. 1, Syl. ¶ 1, 961 P.2d 667 (1998), the Court ruled that "[i]t is the legislature's prerogative to make policy decisions and specify the punishment for crime. The legislature has the right to determine that sexual offenders pose a unique

threat to society such that they are subject to registration and public disclosure requirements when other types of offenders are not." The Court went on to hold that any punitive effect of registration and notification were not so disproportionate to the facts of defendant's violent, sexually motivated offense that registration could be considered "inhumane, shocking, barbarous, or contrary to fundamental notions of human dignity so as to constitute cruel and unusual punishment," while recognizing the public safety interest. Scott, 265 Kan. 1 at Syl. ¶ 4.

In Scott, 265 Kan. 1 at Syl. ¶ 1, the Supreme Court stated "[t]he cruel and unusual punishment clauses of the Eighth Amendment to the United States Constitution and § 9 of the Kansas Constitution Bill of Rights are nearly identical and are to be construed similarly." See also Van Dyke v. State, 31 Kan.App.2d 668, 70 P.3d 1217 (2003).

The prohibition is directed primarily at the kind of punishment imposed rather than its duration. State v. McCloud, 257 Kan. 1, 3, 891 P.2d 324, cert. denied 516 U.S. 837, 116 S.Ct. 118, 133 L.Ed.2d 69 (1995). Nonetheless, Kansas courts have held that the length of a sentence may be so excessive as to constitute cruel or unusual punishment. State v. McDaniel & Owens, 228 Kan. 172, 185, 612 P.2d 1231 (1980). "Cruel and unusual punishment involves punishment that shocks the conscience or "which seems inhumane or barbarous." State v. Scherzer, 254 Kan. 926, 939, 869 P.2d 729 (1994).

The Kansas Supreme Court has on many occasions faced the issue of whether the length of a particular sentence constitutes cruel or unusual punishment in a number of contexts. See, e.g., State v. Tyler, 251 Kan. 616, 644-46, 840 P.2d 413 (1992) (consecutive sentences totaling 111 to 330 years not cruel and unusual punishment); State v. Weigel, 228 Kan. 194, 202, 612 P.2d 636 (1980) (sentence not cruel and unusual

because it was longer than those given to the defendant accomplices); State v. Freeman, 223 Kan. 362, 368, 574 P.2d 950 (1978) (statute fixing mandatory minimum prison term without parole not cruel and unusual); Cipolla v. State, 207 Kan. 822, 824, 486 P.2d 1391 (1971) (Habitual Criminal Act sentence enhancement does not constitute infliction of cruel or unusual punishment).

**Freeman Factors and the "Shocks the Conscience Standard"**

In State v. Gomez, 290 Kan. 858, 867, 235 P.3d 1203 (2010), this Court recognized that the analysis of whether a sentence qualifies as cruel or unusual in a Jessica's Law case "includes both factual and legal questions" and identified the three relevant evaluation criteria from State v. Freeman, 223 Kan. 362, 574 P.2d 950 (1978).

In Freeman, the defendant was convicted of second-degree murder in the death of her abusive husband. Id. She received the minimum sentence but was denied probation pursuant to the statute. She was sentenced pursuant to the mandatory disposition requirement for persons who commit Article 34 crimes using a firearm. K.S.A. 1979 Supp. 21-4618. Freeman attacked the operation of the statute as cruel and unusual punishment. Id. at 363. The challenge was that the length of the sentence was "cruel and unusual."

Freeman looked to a "shock the conscience" standard. The decision in Freeman made substantive additions to the concept of a disproportionate sentence as cruel and unusual punishment. As an underlying principle, the court stated:

"Punishment may be constitutionally impermissible, although not cruel or unusual in its method, if it is so disproportionate to the crimes for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity." Freeman, 223

Kan. at 367 (citing State v. Coutcher, 198 Kan. 282, 287, 424 P.2d 865 (1967); Cipolla v. State, 207 Kan. 822, 824-25, 486 P.2d 1391 (1971); Annot.: Cruel Punishment Length of Sentence, 33 A.L.R.3d 335). The Freeman court set forth three criteria for evaluating whether the length of a sentence offends the constitutional prohibition against "cruel punishment":

> (1) The nature of the offense and the character of the offender should be examined with particular regard to the degree of danger present to society; relevant to this inquiry are the facts of the crime, the violent or nonviolent nature of the offense, the extent of culpability for the injury resulting, and the penological purposes of the prescribed punishment;
>
> (2) A comparison of the punishment with punishment imposed in this jurisdiction for more serious offenses, and if among them are found more serious crimes punished less severely than the offense in question the challenged penalty is to that extent suspect; and
>
> (3) A comparison of the penalty with punishments in other jurisdictions for the same offense.

Freeman, 223 Kan. at 367, 574 P.2d 950; see also State v. Weigel, 228 Kan. 194, Syl. ¶ 13, 612 P.2d 636 (1980).

When applying the Freeman factors, no one factor controls. "Ultimately, one consideration may weigh so heavily that it directs the final conclusion," but "consideration should be given to each prong of the test." State v. Ortega-Cadelan, 287 Kan. 157, 160, 194 P.3d 1195 (2008).

In examining the nature of the offense and the character of the defendant, it is clear that he presents a high degree of danger to society. Here, the defendant knowingly engaged in sexual intercourse with a thirteen-year old child. The defendant acknowledged that he knew it was wrong but did so anyway. At the time of sentencing, the victim was still in counseling to address the sexual abuse. In the defendant's sexual

offender evaluation, the defendant demonstrated tendencies toward denial, repression, blaming, lying, running away and acting out. (Vol. 18, p. 5).

The defendant's mother reported that the defendant became involved in online pornography while he was being homeschooled. After she discovered it and deleted all of the defendant's bookmarks, she reported that within the first hour of the next day, the defendant had bookmarked 197 new sites. The defendant was engaging in various things to get around the blocks that she initiated on the computer. During a supervised online exam, the defendant was discovered to be in an online pornography chat. The defendant said he felt it was a problem because he couldn't stop watching it and felt he had become addicted to it. (Vol. 18, p. 4).

As noted in State v. Limon, 280 Kan. 275, 297, 122 P.3d 22 (2005), "the State has a significant interest in prohibiting sex between adults and minors, not only because of the potentially coercive effect of an adult's influence but also because of concern regarding the minor's ability to arrive at an informed consent."

The Scott Court stated that "the legislature has reached the conclusion that sex offenders in general pose a greater risk of reoffending such that the public should have the opportunity to defend themselves from this danger." Scott, 265 Kan. at 9-10.

The defendant essentially argues that Scott is no longer valid precedent due to the changes in the Kansas Offender Registration law since Scott was decided. The defendant further argues that Scott can be factually distinguished because Scott was a violent offense. The defendant's assertion that his crime was non-violent is contradicted by statutory definitions defining rape as a sexually violent crime as well as an aggravated

offense because it involved penetration of a child under the age of fourteen. See K.S.A. 2010 21-3502(a)(2).

Furthermore, the defendant's assertion that his crime is non-violent is contradicted by overwhelming case law authority.

Sexual crimes against minors are "considered particularly heinous crimes." State v. Mossman, 294 Kan. 901, 909, 281 P.3d 153 (July 27, 2012) (quoting People v. Dash, 104 P.3d 286, 293 (Colo. App. 2004). It has been acknowledged that society has a penological interest in punishing individuals who sexually abuse minors because they "present a special problem and danger to society" and their actions cause "particularly devastating effects" on the victims, to include physical and psychological damage. Mossman, 294 Kan. at 909 (quoting State v. Wade, 757 N.W.2d 618, 626 (Iowa 2008)). The Wade Court further noted that the State's essential interest in protecting minors from sexual offenses accounts for the legislature's decision to treat sexual offenses against minors as a forcible or violent felony even when it does not involve physical force. Wade, 757 N.W.2d at 626.

The Mossman Court touched upon the "grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class. The risk of recidivism posed by sex offenders is 'frightening and high.'" Mossman, 294 Kan. at 909-910; (quoting McKune v. Lile, 536 U.S. 24, 34, 122 S.Ct. 2017, 153 L.Ed.2d 47 (2002)). see also Smith v. Doe, 538 U.S. at 103 and Wade, 757 N.W.2d at 626.

The defendant's lifetime registration cannot be said to be inhumane, barbarous, inherently cruel, shocking, unacceptable, or offensive to human dignity. Furthermore,

there is a public safety interest in requiring a longer period of offender registration for an individual who commits a sexual offense against a child.

The defendant argues there are other offenses in Kansas that are more serious but punished less severely due to the shorter term of offender registration. The defendant specifically references capital murder, first degree murder, second degree murder, and voluntary manslaughter being offenses that are more serious but have shorter offender registration periods than rape. The defendant states that it is clear that the Kansas legislature views crimes involving death as more severe than rape. The Woodard Court stated that "[t]he fact that the penalty for certain categories of homicide may be less severe than the penalties for other, nonhomicide crimes does not automatically render the penalties for the nonhomicide crimes unconstitutional." Woodard, 294 Kan. at 723.

"There is no strict linear order of criminal activity that ranks all homicides as the most serious crimes and all nonhomicide crimes as less serious, with the corresponding penalties necessarily ranking in diminishing durations of imprisonment." Woodard, 294 Kan. at 723. Sexual offenses against child are unique offenses and the offenders pose a unique risk. See Mossman, 294 Kan. at 909-910.

Even should this Court accept defendant's contention that there are more serious offenses punished less severely, no one factor controls in determining whether a sentence is grossly disproportionate.

The third Freeman factor requires a review of penalties imposed in other jurisdictions for the same offense. It is the legislature's prerogative in imposing appropriate sentences, including period of offender registration, and this prerogative should be recognized and upheld.

The defendant failed to present any evidence regarding the third Freeman factor to the district court and has not presented any information in his brief regarding offender registration periods in other states. Therefore, this Court should disregard any argument as it concerns the third Freeman factor. See State v. Hunt, 275 Kan. 811, 821, 69 P.3d 571 (2003) ("An issue that is not briefed is considered abandoned").

**Eighth Amendment to the United States Constitution**

The Eighth Amendment prohibits "cruel and unusual" punishment. U.S. Const. Amendments VIII, XIV. An Eighth Amendment cruel and unusual argument as to a term-of-years sentence as disproportionate falls into two categories. The first category is case-specific and "involves challenges that argue the term of years is grossly disproportionate given all the circumstances in a particular case. The second comprises cases in which the court implements the proportionality standard by certain categorical restrictions...." Florida v. Graham, 560 U.S. ___, 130 S.Ct. 2011, 2021, 176 L.Ed.2d 825 (2010).

The Graham Court only addressed the categorical restrictions as it related to the imposition of the death penalty or a life sentence imposed against a juvenile in a nonhomicide crime. Prior to Graham, the only categorical restrictions that had been successfully applied were in cases involving the death penalty being imposed for non-homicide cases. Graham, 130 S.Ct. 2011 at Syl. ¶ (a). The Graham Court's decision only expanded the categorical restrictions to prohibit courts from sentencing juvenile offenders to life without parole for non-homicide offenses. Graham, 130 S.Ct. 2011 at Syl. ¶ (b)(1), (b)(2), (b)(3), and (b)(4).

Under the case-specific category, the first classification is a threshold determination; therefore, the Court must first consider whether the defendant's sentence

was grossly disproportionate analyzing the specifics of the case. Graham, 130 S.Ct. at 2022. The Graham Court made it clear that it is only the rare case where an 8th Amendment threshold comparison of the gravity of the offense and the harshness of the penalty will lead to an inference of gross disproportionality. Graham, 130 S.Ct. at 2022. If the Court finds no gross disproportionality, there is no need to conduct the interjurisdictional or intrajurisdicitional analysis similar to the second and third prong of Freeman. See Harmelin v. Michigan, 501 U.S. 957, 1005, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991).

The Eighth Amendment to the United States Constitution does not require strict proportionality between the offense and a sentence and only prohibits an extreme sentence that is grossly disproportionate to the offense. Ewing v. California, 538 U.S. 11, 20-21, 123 S.Ct. 1179, 155 L.Ed.2d 108 (2003). Guidance on how to evaluate a claim that a term of years as disproportionate and, therefore, cruel and unusual punishment under the Eighth Amendment may be found in two United States Supreme Court cases on property crimes. In each, the Court reviewed sentences involving California's "three strikes" law.

In Ewing, 538 U.S. at 17-20, 30, the Defendant walked out of a golf course pro shot with three golf clubs worth a total of $1,200.00 hidden in his pant leg. Ewing had a lengthy record of theft, drug, burglary, and robbery convictions and was on parole when he stole the golf clubs. The robbery and three burglary convictions qualified as prior serious or violent felonies under the California sentencing scheme, and Ewing received a sentence of twenty-five years to life. The Supreme Court ultimately upheld the sentence,

rejecting Ewing's claim that it was grossly disproportionate under the Eighth Amendment.

In Lockyer v. Andrade, 538 U.S. 63, 66-68, 77, 123 S.Ct. 1166, 155 L.Ed.2d 144 (2003), the crimes involved were even less serious that those at issue in Ewing. The defendant received two consecutive terms of twenty-five years to life for convictions under California's "three strikes" law stemming from thefts of videotapes from two different K-Mart stores. The total value of the videotapes was approximately $150.00. The thefts of the videotapes were charged as felonies because of defendant's previous convictions. At sentencing, it was his previous burglary convictions that led specifically to application of the "three strikes" law to both of his new felony convictions. The Court found that his life sentence did not offend the Eighth Amendment. In these cases, the United States Supreme Court upheld life sentences in cases involving much less serious facts than this case.

In addressing the threshold determination; it is clear that defendant's lifetime registration is not grossly disproportionate after reviewing the facts of the case. Here, the defendant's case is not the rare case where the gravity of the offense and the harshness of the penalty leads to an inference of gross disproportionality. The defendant knowingly pursued a sexual relationship with the thirteen-year old victim. The defendant admitted that he knew what he was doing was wrong but essentially did it anyway. In the defendant's sexual offender evaluation, the defendant demonstrated tendencies toward denial, repression, blaming, lying, running away and acting out. (Vol. 18, p. 5).

The defendant's mother reported that the defendant became involved in online pornography while he was being homeschooled. After she discovered it and deleted all

of the defendant's bookmarks, she reported that within the first hour of the next day, the defendant had bookmarked 197 new sites. The defendant was engage in various things to get around the blocks that she initiated on the computer. During a supervised online exam, the defendant was discovered to be in an online pornography chat. The defendant said he felt it was a problem because he couldn't stop watching it and felt he had become addicted to it. (Vol. 18, p. 4).

As there is no gross disproportionality in the defendant's sentence, this Court need not compare defendant's sentence to that of other offenders in this jurisdiction or with sentences imposed in other states for similar offenses.

## CONCLUSION

The defendant's lifetime offender registration does not violate Section 9 of the Kansas Constitution Bill of Rights or the Eighth Amendment to the United States Constitution and should be upheld.

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**CERTIFICATE OF SERVICE**

I, Christina Trocheck, Assistant Saline County Attorney, hereby certify that I mailed two (2) copies of this Brief of Appellee to Michelle A. Davis, Kansas Appellate Defender Office, Jayhawk Tower, 700 Jackson, Suite 900, Topeka, Kansas 66603, Attorney for Appellant, by U.S. mail, postage prepaid on the 12th day of April, 2013; and delivered the original and sixteen (16) copies to Derek Schmidt, Attorney General, Criminal Litigation Division, 120 S.W. Tenth, 2nd Floor, Topeka, Kansas 66612, on the 12th day of April, 2013.

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