

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS

STATE OF KANSAS,
Petitioner

and

Case No. 2018-CR-000640
2019-CR-001144

ANTOINE FIELDER,
HUGO VILLANUEVA,
Defendants

DECISION

The Court is tasked with determining the constitutionality of the Kansas Death Penalty as applied to defendants Fielder and Villanueva. Both defendants were charged with capital murder, and the state filed a notice of intent to seek the death penalty. Defendant Fielder was charged with killing two Wyandotte County sheriff deputies on 6-15-18 and Defendant Villanueva was charged with killing four individuals in a bar on 10-6-19, making both eligible for the death penalty. This Court will attempt to separate the issue of the death penalty from its moral ramifications. Courts are not especially adept at deciding moral issues but are well versed at analyzing legal issues. The Court believes it is a fruitless exercise to attempt to persuade those who believe in the death penalty to relinquish their views or to convince those who are opposed that it may be appropriate in some cases.

Let us then consider the economic and psychological impact of having a death penalty. Kansas reinstated the death penalty in 1994, well after many other states had done so. Kansas currently has nine persons on death row.

The last execution in Kansas was in 1965 (George York and James Latham, by double hanging). Kansas has not executed anyone in more than 60 years. During this period the death penalty was declared unconstitutional by the United States Supreme Court in *Furman v. Georgia*, (1972) and reinstated in *Woodson v. North Carolina*, (1976). Currently 27 states have the death penalty and nine have carried out executions in the past decade. Many states have abolished the death penalty and the majority of states that have the death penalty do not use it.

Since 2009 the trend has been towards abolishing the death penalty with seven states having done so legislatively and one state by court ruling. No states or countries have established a death penalty since 1994 (Kansas). In 2010 the Kansas Senate came within one vote of abolishing the death penalty. (Death Penalty Information Center, deathpenaltyinfo.org/documents/factsheet.pdf).

One might reasonably question why have a death penalty and not use it. The justifications for the death penalty are typically either, a deterrent or retribution (punishment). Deterrents are the more common justification but let us consider the issue of retribution at present. It has already been noted that the Court is a poor place to determine morality, and this Court is not wise enough to oppose or support the victims' families and friends for desiring the person responsible for their loved one's death to be executed. Defendants eligible for the death penalty are typically those who have committed horrible crimes with extreme cruelty or are responsible for the death of multiple victims or both.

In Ancient Greece the most important concepts were *timé* (honor) and *kleos* (glory/fame). When in Homer's epic *The Illiad*, Patroclus clad in Achilles armor is slain by Hector, Achilles vows revenge. After making good his promise, Achilles desecrates Hector's body by dragging it around the city of Troy and refuses to return the body for burial. Priam, Hector's father, comes to Achilles to beg for the return of his son's body. Achilles shows compassion for the father and returns the body. This Court does not pretend that most victims could forgive or show any compassion towards the murderer of their loved one. The ability to actually grieve the loss and yet attempt to restore some normal life for the victim's family is of course much to be hoped for. One of the first recorded stories in history examines loss, grief, sorrow and recovery, asking us to consider which brought Achilles more *timé* and *kleos*, the killing of Hector or the restoring of his body to his grieving father?

The issue of how the death penalty is administered is often hotly debated as it relates to cruel and unusual punishment. Is it really the method of execution we question or is it the act of the state executing one of its own? Is the cruel and unusual the method of execution or the reality of a person knowing their death is 5 months, 5 days or 5 minutes away, and the psychological impact of that knowledge?

We are very adept at ending human life. It is not difficult nor physically painful. In 1989 a physician named Jack Kevorkian crafted a machine called a Thanatron to assist in the voluntary ending of terminally ill persons' lives. Putting morality aside again, there were two active ingredients, secobarbital to cause unconsciousness and potassium chloride to stop the heart, chemicals easily obtained. The process was initiated by pressing a button, causing the secobarbital to be intravenously administered. After an appropriate time for unconsciousness to occur, approximately 30-45 seconds, the potassium chloride then intravenously enters the blood

system, stopping the heart and death occurs. The argument regarding the unavailability of the necessary components and the method of administering them are peripheral arguments to conceal how easy it is to end one's life voluntarily or by state action. While acknowledging that mistakes are possible, it should be clear the hurdles to administering the death penalty are moral and political, not technical in nature.

The following are the Court's finding of facts and conclusions of law. The hearings on the Constitutionality of Kansas' Death Penalty were held between October 28th – October 31st, 2024, and also on 1/8/2025. The Court heard arguments on behalf of Mr. Fielder and Mr. Villanueva from many of the leading experts in this country who are opposed to the death penalty. Being a leading expert in any field does not compel the Court to agree with the conclusions they have drawn, however, the evidence they presented was decidedly persuasive and well-reasoned.

Professor Carol Steiker, an expert in the history of capital punishment and its evolution, testified about the history and application of the death penalty in the United States and Kansas. The United States Supreme Court constitutionally invalidated the death penalty in 1972 in the case of *Furman v. Georgia*. 408 US 238 (1972) States then attempted to create new statutes that complied with *Furman's* concerns with standardless sentencing discretion. In 1976 the United States Supreme Court struck down mandatory capital sentencing as unconstitutional in *Woodson v. North Carolina* 428 US 280 (1976) but held guided discretion statutes in these states Georgia, Florida and Texas as constitutional. In 1978 the United States Supreme Court invalidated Ohio's narrowly drawn list of mitigating factors as unconstitutional *Lockett v. Ohio* 428 US 5806 (1978) capital sentencing must consider the nature and circumstances of the crime, the defendant's character background, history, and mental and physical condition. *Lockett* Adopting the requirements of (ALI) American Law Institute model penal code –MPC Sec 210.6, (repealed 2006). In 2008 36 states authorized the death penalty. Now 27 states have the death penalty statute. Three additional states have a gubernatorial moratorium in place (California, Oregon, and Pennsylvania). More than two-thirds of the states with the death penalty have not executed a defendant for a decade (Death Penalty information Center). In 2008 the number of executions in the preceding three years was 152. Today's three-year average is 53 (Defendant exhibit 1, pg. 17). In 2008, 389 persons received the death penalty (three-year average). Today the three-year average is 60, a decline of more than 70 percent (Defendant exhibit 1, pg. 17).

A study of fifteen states showed that between 2000-2016 capital cases cost \$700,000 more than non-capital cases. (Peter A. Collins, Matthew J. Hickman & Robert C. Boruchowitz, *Proportionality, Cost and Accuracy of Capital Punishment in Oklahoma*, in REPORT OF OKLAHOMA DEATH PENALTY COMMISSION app. IB, at 228 (2017)) Drug cost for executions have risen dramatically. In 2014 Virginia paid \$250 compared to \$66,000 in 2016. In the years 2017-2020 Tennessee paid \$190,000 in drug costs carrying out two executions. Missouri spent more than \$160,000 in the years 2015-2020 to execute defendants. Arizona paid

\$1.5 million in 2020 for execution drugs. (Ed Pilkington, *revealed: Republican-led States Secretly Spending Huge Sums on Execution Drugs*, The Guardian (April 9, 2021)).

Professor Elizabeth Semel, an expert in capital punishment and statistical analysis, testified concerning the use of *Bastón* challenges to choose a fair and impartial jury. In *Bastón v. Kentucky* 476US79 (1986) the United States Supreme Court established a three-step analysis to determine if the prosecution purposely discriminates against black prospective jurors in exercising peremptory challenges. First, the defendant must make a *prima facie* showing purposeful discrimination. The defendant need only raise an inference of discrimination based on all relevant circumstances. If the trial court agrees, the second step requires the prosecution must put forward a neutral explanation for the challenge of minority jurors. It must be more than a simple denial. In step three the defendant must establish to the court's satisfaction purposeful discrimination. (*Bastón*)

Professor Semel concludes *Bastón* practical application is so flawed that it does not protect racial biases in jury selection and must be reformed, a fact known to Kansans for years. (Governor's Commission on Racial Equity & Justice, *INITIAL REPORT: Policing and Law Enforcement in Kansas* (2020), Meredith J. Horgan & Diana Stanley, *Response to Racial Injustice*, 90-Dec. J. Kan. B.A. 42, 46-47 (Nov./Dec. 2021) (citing EJI, *Illegal Racial Discrimination*, *supra* note 15; citing A.B. 3070), *Equal Justice Under Law: Report of the Racial Justice Task Force to the Board of Governors of the Wichita Bar Association*, at pg. 6 (June 4, 2021)). Without a proper application of *Bastón* or a reform of *Bastón* protocol the impaneling of a race neutral jury will remain suspect.

Professor Frank Baumgartner, an expert in statistics, death penalty and deterrents, provided statistical comparisons of homicides, capital prosecutions and death sentences in Kansas from 1994 to present. Kansas has imposed 15 death sentences since 1994, in the majority of these cases the victims were white women and there are no cases with a white defendant and a black victim. (Defendant Exhibit 23, pg. 7)

Table 1. Death Sentences in Kansas since 1994

Name	County	Status	Sex	Race	Birth	Crime	Sentence	Exit	Victims
Gary Wayne Kleypas	Crawford	Currently On Death Row	M	W	10/8/1955	3/30/1996	8/6/1997		1WF
Michael Marsh	Sedgwick	Resentenced to Life with possibility of parole (Hard 40)	M	W	8/12/1975	6/17/1996	4/16/1998	4/3/2009	2WF
Gavin Scott	Sedgwick	Resentenced to Life with possibility of parole (Hard 40)	M	W	3/4/1978	9/13/1996	8/21/1998	3/24/2010	1WM; 1WF
Stanley Elms	Sedgwick	Resentenced to Life with possibility of parole (Hard 40)	M	W	8/19/1976	5/4/1998	2/10/2000	11/19/2004	1WF
Johnathan Daniel Carr	Sedgwick	Currently On Death Row	M	B	3/30/1980	12/11/2000	11/15/2002		3WM; 2WF
Reginald Dexter Carr	Sedgwick	Currently On Death Row	M	B	11/14/1977	12/11/2000	11/15/2002		3WM; 2WF
John Edward Robinson Sr.	Johnson	Currently On Death Row	M	W	12/27/1943	6/3/2000	1/21/2003		3WF
Douglas Stephen Belt	Sedgwick	Natural Death	M	W	11/19/1961	6/24/2002	11/17/2004	4/13/2016	1HF
Phillip Cheatham	Shawnee	Resentenced to Life with possibility of parole (Hard 25)	M	B	1/6/1973	12/13/2003	10/28/2005	3/20/2010	2BF
Sidney John Gleason	Barton	Currently On Death Row	M	B	4/22/1979	2/21/2004	8/28/2006		1WM; 1 HF
Scott Denver Cheever	Greenwood	Currently On Death Row	M	W	8/19/1981	1/19/2005	1/23/2008		1WM
Justin Eugene Thurber	Cowley	Currently On Death Row	M	W	3/14/1983	1/5/2007	3/20/2009		1WF
James Kraig Kahler	Osage	Currently On Death Row	M	W	1/15/1963	11/28/2009	10/11/2011		4WF
Glenn Cross Frazier	Johnson	Natural Death	M	W	11/23/1940	4/13/2014	11/10/2015	5/15/2021	2WM; 1WF
Kyle Trevor Flack	Franklin	Currently On Death Row	M	W	6/18/1985	4/20/2013	5/18/2016		2 WM; 2WF

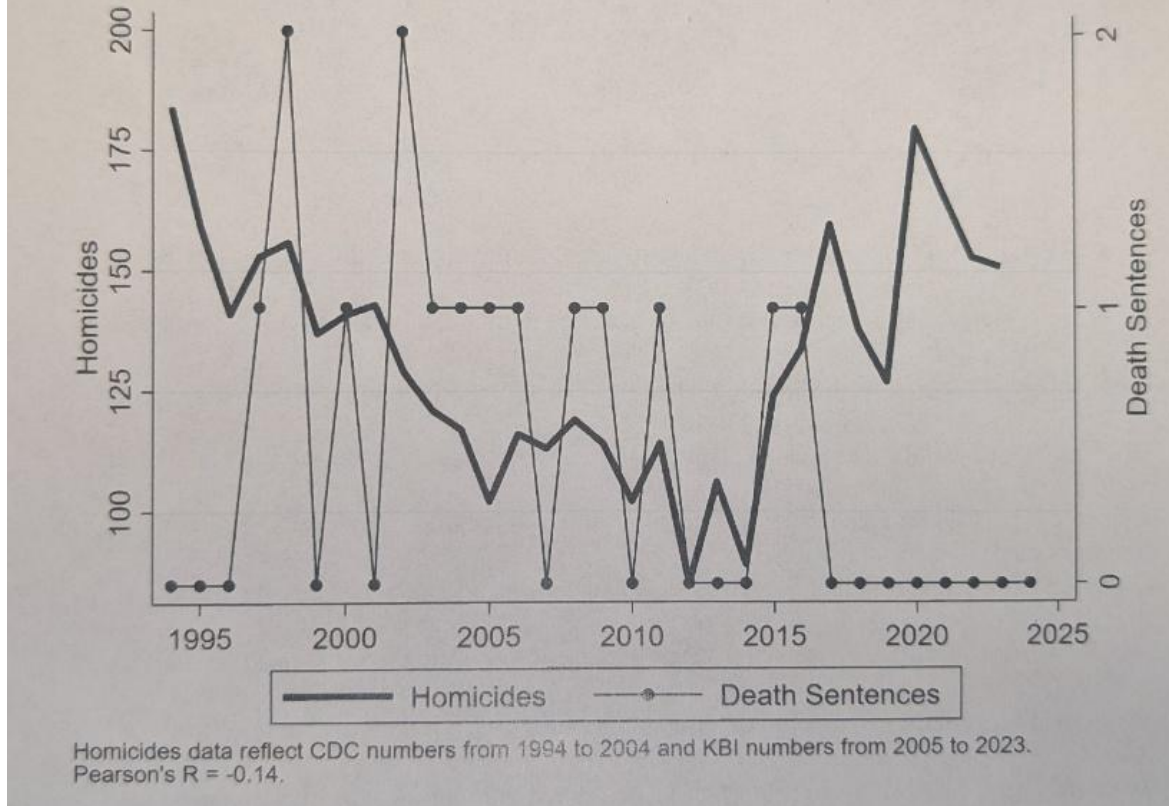
Prosecutors have filed 129 capital cases since 1994 with 76 of those cases having a death notice given. (a necessary prerequisite for seeking the death penalty KSA 21-6617) The same racial and gender disparity applies in Kansas prosecutors charging decisions. (Capital Charging and death noticing information provided by the Kansas State Board of Indigent' Defense Services (BIDS)) (Defendant Exhibit 23, pg. 13)

Table 3. Homicides, Capital Charges, Death Notices, and Death Sentences in Kansas.

Label	Homicides	Capital Charges	Death Notices	Death Sentences	Rate per 100 Homicides		
					Charges	Notices	Sentences
Total by Victims	2,543	203	142	32	7.98	5.58	1.26
By Victim Gender							
Male	1,828	82	58	10	4.49	3.17	0.55
Female	706	118	83	22	16.71	11.76	3.12
By Victim Race							
Black	910	41	31	2	4.51	3.41	0.22
White	1,127	125	92	28	11.09	8.16	2.48
By Victim Race and Gender							
Black Male	750	17	12	0	2.27	1.60	0.00
White Male	698	49	37	10	7.02	5.30	1.43
Black Female	159	24	19	2	15.09	11.95	1.26
White Female	427	76	55	18	17.80	12.88	4.22
Total by Offenders	2,992	129	76	15	4.31	2.54	0.50
By Offender Gender							
Female	338	6	2	0	1.78	0.59	0.00
Male	2,250	123	74	15	5.47	3.29	0.67
By Offender Race							
Black	1,071	49	33	4	4.58	3.08	0.37
White	1,037	63	36	11	6.08	3.47	1.06
By Offender-Victim Race Combinations							
White kills Black	105	1	0	0	0.95	0.00	0.00
Black kills Black	727	22	14	1	3.03	1.93	0.14
White kills White	831	60	35	10	7.22	4.21	1.20
Black kills White	251	26	19	3	10.36	7.57	1.20

Professor Baumgartner concludes that capital punishment is rare; from 1994 through 2023, 15 death sentences were prescribed out of 4,115 homicides that were committed. Of the 15 death sentences, there have been zero executions. The correlation between homicides and death sentencing behavior (capital charging, death noticing and death sentencing) is nearly zero. (Defendant Exhibit 23, pg. 28)

Figure 8. Homicide Victims and Death Sentences over Time.⁷

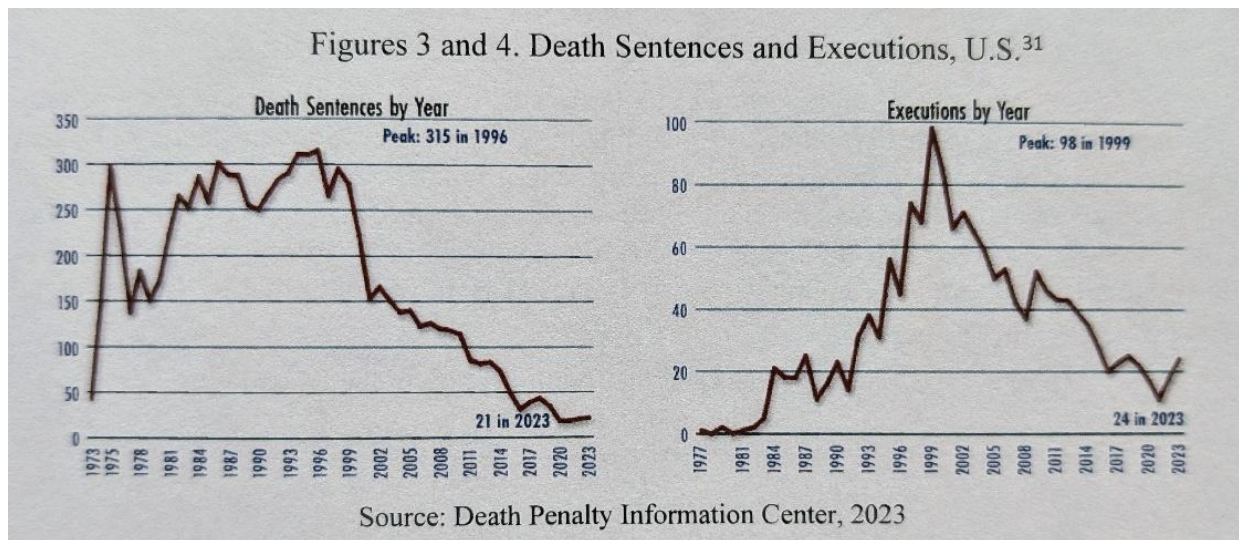


Of the 15 defendants sentenced to death not one killed a black victim despite black male victims making up over 30 percent of homicides. White female victims comprise about 20 percent of homicide victims. However, cases with white female victims are most likely to lead to a death sentence. The factors which distinguish death sentence cases from non-death sentence cases are the race and gender of the victim, and the race and gender of the defendant. (Defendants exhibit 20 pg. 30) A result far from the “even-handed, rational and consistent impositions of a death sentence under law” *Jurek v. Texas* 428 U.S. 262 at page 276 (1976).

Professor Jeffrey Fagan, an expert in statistics, death penalty and deterrents, testified mainly on the statistics of deterrents. The scientific community has found no reliable evidence of the death penalty being a deterrent to homicides. National Research Council, *Deterrence and the Death Penalty* (D. Nagin and J. V. Pepper, eds.) (2012) *See also* John J. Donohue, “Empirical Analysis and The Fate of Capital Punishment,” 11 *Duke J. Const. L. & Pub. Pol’y* 51 (2016). Paul H. Robinson and John M. Darley. “Does Criminal Law Deter? A Behavioral Science Investigation.” 24 *Oxford Journal of Legal Studies* 173 (2004)) Murder rates are and have been independent of the imposition of the death penalty or the institution of having a death penalty. (National Research Council, *Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates*. Panel on Research on Deterrent and Incapacitative Effects (1978)

(concluding “available studies provide no useful evidence on the deterrent effect of capital punishment” (pg. 9) and “that the death penalty [as practiced in the United States] can never be subjected to the kind of statistical analysis that would validly establish the presence or absence of a deterrent effect” (pg. 62)). Murder rates decreased in the 1990’s as executions rose. In the early 2000’s death sentences and executions declined while murder rates continued to decline. (National Research Council, Deterrence and the Death Penalty 1 (D. Nagin and J. V. Pepper, eds) (2012)) A study of a death penalty moratorium in five states from 2000-2020 revealed no deterrent effect of executions on homicide rates. (Justin Craig Heflin, Essays on Public Policy: The Impact of Execution Moratoriums on Homicide Rates (July 29, 2023) (Ph.D. dissertation, West Virginia University)) When studying murder rates in states with the death penalty vs those without the death penalty, findings showed no deterrent effect in the former. (Death Penalty Information Center, Murder Rate Death Penalty States Compared to Non-Death Penalty States) The nationwide decline in homicides since 2000 occurred contemporaneously with a decline in death sentences and executions in death penalty states. (Defendant Exhibit 24, pg. 7-8)

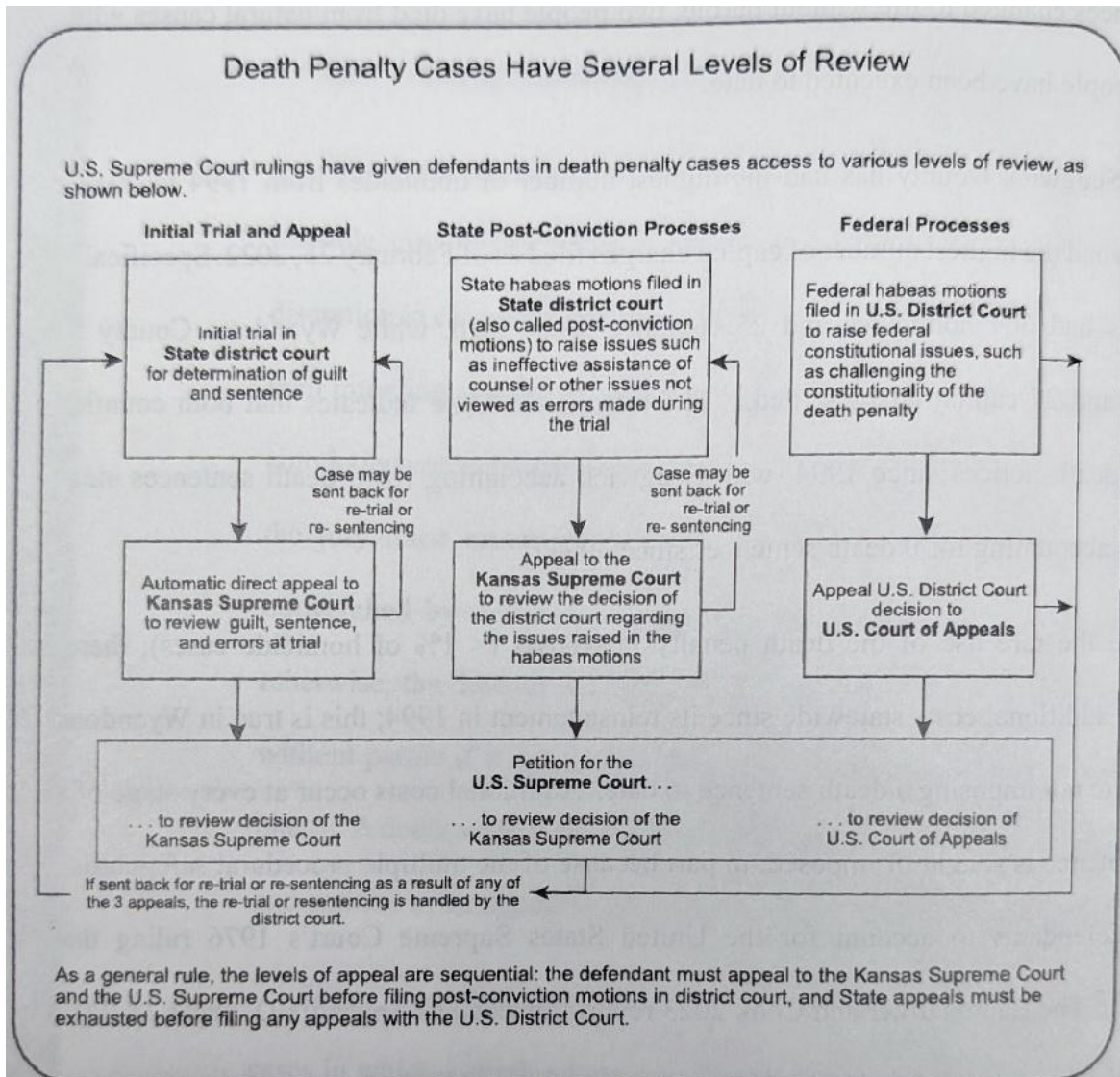




Kansas homicide trends match national averages which are not correlated with death sentences, a fact borne out by Kansas not executing anyone since 1965. (Death Penalty Information Center, Kansas, and Kansas Dept. of Corrections, Capital Punishment Information) In a 2004 study in Kansas, the social science community generally concluded the death penalty does not have a deterrent effect on would-be murderers. (*Report of the Kansas Judicial Council Death Penalty Advisory Committee on Certain Issues Related to the Death Penalty*, Appendix A, at pg. 8 (Nov. 12, 2004)) The primary tenant of death penalty deterrence is that punishment must be certain and swift. Of the nine persons on death row in Kansas three have cases over 20 years old and four are more than 15 years old. (Kansas Department of Corrections, *Capital Punishment Information*)

Professor Brittney Street, an expert in economics and public cost data, analyzed the cost of the death penalty in Kansas and Wyandotte County. Her conclusions confirm the death penalty is more costly than any other punishment in every state examined including Kansas. (For example, see California Commission on the Fair Administration of Justice 2008 (California), Minsker 2009 (California), Alarcon and Mitchell 2011 (California), Marceau and Whitson 2013 (Colorado), Gould and Greenman 2010 (Federal), Palm Beach Post Capital Bureau 2000 (Florida), Office of Performance Evaluations 2014 (Idaho), Indiana Legislative Services Agency 2015 (Indiana), Legislative Division of Post Audit 2003 (Kansas), Judicial Council 2014 (Kansas), Baumgartner and Cook 2023, Cohen et al 2019 (Louisiana), Roman et al. 2008 (Maryland), Dieter 2009 National Survey), Goss, Strain and Blalock 2016 (Nebraska), Niethe 2012 (Nevada), Forsberg 2005 (New Jersey), Cook and Slawson 1993 (North Carolina), Cook 2009 (North Carolina), Collins et al. 2017 (Oklahoma), Dieter 2010 (Pennsylvania), Morgan 2004 (Tennessee), Washington State Bar Association 2006 (Washington), Collings et al. 2015 (Washington). In Wyandotte County the initial trial costs alone are approximately \$226,000 more per case when the death penalty is sought; \$146,531 in defense cost, \$24,040 in

prosecution costs, \$5,167 in court costs. (Defendants exhibit 19 pg. 2) In death penalty cases the county bears 85% of the investigative cost, 75% of the cost of prosecutions and the state is responsible for 97% of the defendant cost. (Defendants Exhibit 19, pg. 3) The progression of a death penalty after reinstatement in 1994 is as follows “The death penalty was reinstated in Kansas in 1994 for intentional and premediated killing in 7 possible circumstances by an adult with one or more aggravating circumstances. Prosecutors have discretion in charging capital cases and in seeking the death penalty but must file a death notice indicating their intentions to seek the death penalty within 7 days after arraignment. Capital cases resulting in a guilty conviction where the prosecutor is seeking the death penalty undergo a separate sentencing phase by which the jury must unanimously agree that one or more aggravating circumstances are present and not outweighed by mitigating circumstances beyond a reasonable doubt to administer a death sentence; otherwise, the defendant is sentenced to life without parole. The court can modify the sentence to life without parole if it determines that a death sentence is not supported by the evidence at the sentencing phase. A death sentence is automatically subject to review by, and appeal to, the Kansas Supreme Court, and entitled to an appeal to the U.S. Supreme Court, per federal and state law.” (Defendant Exhibit 19, pg. 6)



Much of Professor Street's information was drawn from studies conducted by the Kansas Legislature Post Audit Committee (2003) and the 2014 Kansas Judicial Council Report. Professor Street shows the investigation and initial trial cost from 1994-2003 in the following chart.

Table 1: Investigation and Initial Trial Costs for Cases (Statewide and Wyandotte, 1994-2003)

Case Type	Total cost for Kansas	Average Cost for Kansas	Total cost for Wyandotte Co	Average cost for Wyandotte Co
Cases seeking the death penalty with a death sentence imposed	\$5,204,761 (N=7)	\$743,537 (N=7)	(N=0)	(N=0)
Cases seeking the death penalty with a lesser sentence imposed	\$2,034,350 (N=7)	\$290,621 (N=7)	\$530,547 (N=3)	\$176,849 (N=3)
Cases not seeking the death penalty	\$878,188 (N=8)	\$109,774 (N=8)	\$95,658 (N=2)	\$47,829 (N=2)

Notes: Calculations are based on individual cases reported in Appendix D of the 2003 Legislative Post Audit Report (page 38).

A defense attorney must be qualified to handle a death penalty case and because of these heightened requirements, much capital defense work is provided by the Kansas Death Penalty Unit. (A state financed entity) The following graphic shows the budget for the unit from 2014-2024. (Defendant Exhibit 19, pg. 20)

Table 4: Fiscal Year Budget for Kansas Capital Defense (2014-2024)

FY	Nominal dollar amount	Real dollar amount (2014 dollars)	Increase relative to 2014 budget in real dollars
2014	\$1,185,400 (actual)	\$1,185,400.00	--
2015	\$1,523,538 (actual)	\$1,521,609.47	128%
2016	\$1,662,162 (actual)	\$1,639,307.27	138%
2017	\$1,943,271 (actual)	\$1,876,671.75	158%
2018	\$2,430,626 (actual)	\$2,291,235.26	193%
2019	\$2,966,671 (actual)	\$2,746,230.06	232%
2020	\$2,919,218 (actual)	\$2,669,933.93	225%
2021	\$2,923,268 (actual)	\$2,553,275.04	215%
2022	\$3,517,845 (actual)	\$2,844,803.25	240%
2023	\$4,053,237 (approved)	\$3,148,674.76	266%
2024	\$7,562,693 (requested by agency)	\$5,693,668.68	480%

Notes: Budget totals are sourced from the Kansas Legislative Research Department, *Budget Analysis Report FY16-24, Board of Indigent Defense Services*.

The conclusion of Professor Street is Wyandotte County has incurred \$4,289,022 in additional cost for capital cases from 1994 to present. (Defendants exhibit 19 pg. 27) This does not include post-conviction costs because there have been no Wyandotte County capital defendants sentenced to death. More than \$4 million has been spent with the results being no death penalty sentences and zero executions.

A 2023 study by Cook and Baumgartner (Defendant Exhibit 19 Appendix D) reveals the cost a state incurs to maintain a capital punishment system per year to be: California \$125-129 million, Florida \$51 million, Nebraska \$15 million, New Jersey \$11 million, North Carolina \$11 million.

Even more extraordinary to consider is the cost of a single execution in these two states. New Jersey, which has maintained these costs for over 25 years and carried out only one execution, the cumulative cost of that single execution is \$275 million. For California, which has carried out 13 executions since 1976, the cumulative price tag is \$300 million per execution. (Defendant Exhibit 19 Appendix D pg. 9). Cook and Baumgartner estimate the state and local governments in Kansas incurred additional cost for the death penalty in the period between 2014-2018 of \$8,980,100 in defense cost, \$1,162,500 in prosecution cost, \$425,000 in district court cost, totaling \$10,567,600. This averages \$2.1million per year. (Defendant Exhibit 19 Appendix D pg35)

Professor Scott Sundby, an expert in jury decision making and the death penalty, is the primary investigator with The Capital Jury Project (CJP), a study originally funded by the National Science Foundation to determine how jurors in capital cases decide between life and death. Professor Sundby has held this position since 1992.

His work has revealed that if the defendant is black and the victim is white, juries with one black male juror returned a death sentence in 43% of the cases as opposed to 72% of cases if there are no black males on the jury. (William J. Bowers et al., *Death Sentencing in Black and White: An Empirical Analysis of the Role of Jurors' Race and Jury Racial Composition*, 3 University of Pennsylvania Journal of Constitutional Law 171, 193-94 (2001)) In the same black defendant and white victim scenario, a jury with fewer than four white men returned a death sentences in 30% of cases. Five or more white males on a jury, 71% resulted in a death sentence (Bowers ID). The CJP findings show a jury's verdict follows a "critical mass" controlled by the jury's first vote. (Theodore Eisenberg et al., *Forecasting Life and Death: Juror Race, Religion and Attitude Toward the death Penalty*, 30 Journal of Legal Studies 277, 304 (2001)) If the first vote is five votes for life or undecided, the result is almost always a life sentence. (Eisenberg, *supra* note 11 at 304) Conversely, if at least nine jurors vote death on the first ballot a death

sentence is almost always the result. (Eisenberg) Unless eight jurors vote for death on the first ballot there is very little chance of a death sentence. (Eisenberg) This sharp tipping point illustrates the difference a single vote makes on the outcome of capital cases.

Much more difficult to measure but most concerning is the impact of continual court hearings have on the victims' families. The verdict in a capital case resulting in death sentence is not the end but only the beginning of the appellate process. As previously discussed, most of the Kansas death penalty cases have been pending for more than 15 years and no appellate has exhausted their appellate rights. How will families of the victims ever begin to heal and attempt the process of recovery (if that is even possible), when the legal system continues to reopen those painful wounds with each new motion and/or appeal. Who is served when the victims' families dutifully attend appeals over the course of decades? Non-capital cases are also appealed but not to the extent of capital cases. Would it not be critical to know if those most affected by capital cases would consider the putative imposition of the death penalty to be worth the extended misery they experience?

Conclusion of Law

The Defense called 13 expert witnesses in their case. The state cross-examined most of the witnesses and did not present any testimony. The court in this opinion has very briefly highlighted the testimony of six of the defense experts. All defense experts had important information to impart, are highly qualified in their respective fields and their testimony, and their submitted reports are well worth the time to consider for those who are so inclined. This Court's analysis is directed at the economic, fairness and psychological issues with the Kansas death penalty. It questions the propriety of spending Kansans' money and causing the victims' families the extended anguish in keeping a death penalty that the State has not and apparently never will impose.

On December 5, 2024, Defendant Fielder entered a plea of guilty to two counts of capital murder and one count of aggravated robbery. The state withdrew the request for death penalty in return for the plea.

On February 6, 2025, Defendant Villanueva waived his right to a jury trial and a bench trial began. In return for the defendant's waiver of the jury trial the state withdrew the request for the death penalty.

The impossibility of either defendant being subjected to the death penalty causes them to lose their legal standing to challenge the constitutionality of the Kansas death penalty as applied to them. State v. Snow 282 Kan 323 (2006) A defendant may not challenge the constitutionality of

a statute as applied if it does not affect him but may conceivably be applied unconstitutionally in other circumstances.

In the United States Supreme Court case of *Furman v. Georgia*, Justice Brennan said the following:

“To identify before the fact those characteristics of criminal homicides and their perpetrators which call for the death penalty, and to express these characteristics in language which can be fairly understood and applied by the sentencing authority(juries), appear to be tasks which are beyond present human ability.”

IT IS SO ORDERED.

A handwritten signature in blue ink, appearing to read "Bill Khan", is positioned above a horizontal line.

District Court Judge