

The Verdict

The Verdict has been a long running publication associated with the Kansas Municipal Judges Association. Due to recent departures, promotions and communications issues there has been a break in the publication of the Verdict. In an effort to move the publication back to, at a minimum, an annual publication the Verdict was created and provided for your enjoyment. The Verdict will be available on line through the Kansas Municipal Judges Website.

KUDOS and AWARDS

The list of awards and honors given various Municipal Judges is too numerous to include, however the awards associated directly with the KMJA bear noting.

1. Jay Emler will be receiving recognition and an award for his 25 years of service to the Municipal Judges Education Committee. The award will be presented by Chief Justice, Kansas Supreme Court Lawton Nuss. It is a considerable honor, one that Judge Emler has earned and should be proud of for a long time.
2. Judge Carol Beier will receive the Michael Barber Award for service to the Kansas Municipal Judges Association over the years. It is the hope that receiving such a well earned award will entice Justice Beier to continue her relationship with KMJA

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A Look Back at Arizona V. Gant: The Limited Effect on Search and Seizure in Vehicles

By Bryce Abbott

The United States Supreme Court's decision in Arizona v. Gant was arguably a limitation on the ability of law enforcement to conduct a search of an automobile incident to the arrest of the driver or an occupant. Seen by many as a curtailment of the practices under New York v. Belton by removing the incentive for Pretextual stops, the actual impact of the decision may be more academic than realistic.

In order to judge the impact of Gant, it is important to understand how limited in focus the holding really was. Gant was arrested well outside of his vehicle on an outstanding warrant for driving on a suspended driver's license. Officers had seen Gant drive by, park and walk away from his vehicle. Incident to his arrest, a

search of the car revealed a gun and a bag of cocaine in the pocket of a jacket in the backseat. The Court reasoned that because Gant was handcuffed and could not access the interior of the vehicle to retrieve weapons or evident, the search was not justified.

The Aftermath

Gant provided direction for two situations: (1) when conducting a vehicle search incident to arrest when an arrestee is within reaching distance of the vehicle; and (2) when it is reasonable to believe the vehicle contains evidence of the arrest offense or warrant. The facts and circumstances of the case necessarily limited the application of Gant and, subsequently, its impact. It is important to note the two situations are distinct and not dependent on each other. In the case of a search incident to arrest for any offense, the question is what is "within reaching distance" of the vehicle. The answer to this should most often be a factual determination and might be examined under the familiar 'lunge and reach' case law. The test here would be whether it is reasonable for the officers to believe the subject is within reaching distance. Where the defendants were detained outside of the vehicle unrestrained, but not formally arrested, handcuffed or secured and the officers outnumbered the detainees, a court could find the officers could not reasonably believe they were within reaching distance of the passenger compartment.

When the situation turns to an arrest for either an offense committed while in the vehicle or for an outstanding

warrant, the question turns to when it is reasonable to believe the vehicle contains "evidence of the offense or warrant." Because of the arrest, the probable cause otherwise required is not necessary and the officer's actions only need to be reasonable. The 'reasonable to believe' standard equates to the well-known Terry standard of 'reasonable suspicion.' This can best be described as where the search is for evidence of crime of arrest and is predicated upon "the facts known to the police officer at the time of the search, coupled with his common sense, based on his experience, training and the totality of the circumstances."

Many times the offense itself determines that reasonableness. The offenses most often associated with vehicles are those involving driving under the influence. The vehicle itself is an instrumentality of the crime as well as the conveyance of any evidence. A search incident to an arrest for driving under the influence will often reveal a wealth of evidence of consumption of the alcohol or other drugs causing the impairment such as empty alcoholic beverage containers, bar receipts, and drug paraphernalia. However, should the scope of a search go beyond evidence of the elements of the underlying offenses, that search would be illegal.

In a situation where the arrest is made on the basis of an outstanding warrant unrelated to the operation of the vehicle, the underlying offense controls the reasonableness evaluation. Is it reasonable to believe that the vehicle may contain drugs when arresting the driver on a warrant for sale or delivery of a controlled

substance versus a warrant for driving on a suspended license as in the case of Gant? If there is no reasonable basis to believe the vehicle contains relevant evidence of the crime of arrest the nature of the offense would preclude a search incident to arrest.

Did Not Modify Existing Standards

It has been repeatedly noted that Gant did nothing to modify the standards regarding searches pursuant to the automobile exception to the search warrant requirement. Where the search is justified by this exception, it is not necessary to determine whether it was also justified by being incident to an arrest.

Named Exceptions

The Gant opinion also noted other exceptions to the warrant requirement that survived and were available: Frisk for weapons; probable cause of evidence of a crime; and protective sweeps.

An officer is permitted to frisk the vehicle's passenger compartment when they have reasonable suspicion that an individual, whether or not the arrestee, is dangerous and might access the vehicle to gain immediate control of weapons. Narrowing of the ability to search incident to arrest did not affect the validity of Michigan v. Long and an officer is permitted to search vehicle when safety or evidentiary concerns demand. Where no arrest made, officer may still search if they reasonable believe suspect is dangerous and may gain immediate control of a weapon.

When conducting a search based on independent probable cause of the evidence of a crime, the fact of an arrest is irrelevant. Probable cause to believe a vehicle contains evidence of criminal activity has long been relied upon in permitting a warrantless search. Gant did not modify the standards regarding searches made pursuant to the automobile exception. If probable cause exists to believe a vehicle contains evidence of criminal activity, an officer is allowed to search for evidence relevant to offenses other than the offense of arrest and the scope of the search authorized is broader.

For example, the police lawfully searched a vehicle after he driver handed the officer a marijuana cigarette. The search was not the result of traffic violation. Rather, the defendant's act of possession of marijuana inside the vehicle established probable cause.

A protective sweep involving a vehicle is one of officer safety and the nature of the vehicle may control the extent of the sweep. Multi-passenger vans, recreational vehicles, motor homes, buses and tractor-trailer rigs pose unique safety issues for roadside officers dealing with a suspect.

Other Exceptions

Other exceptions not specifically outlined by the Court in Gant also survive and may be considered. While not an exhaustive list, the most common would include consent, inventory, abandonment and plain view.

Consent: The easiest of all exceptions to the search warrant requirement is the one of consent. So long as the defendant makes a knowing and intelligent waiver of his rights, the officer may search without a warrant. Such waiver must be both knowing and intelligent. The authority of the person giving the consent may be one factor to consider.

Inventory: So long as the officer's department has a written policy providing for it, the officer may inventory the contents of a vehicle prior to it being impounded and towed for the purpose of safekeeping and avoiding claims of loss. This exception has survived and been well-recognized following Gant.

Abandonment: If vehicle has been abandoned, then privacy interests have also been abandoned and the officer is free to search the vehicle. Where a paper bag containing Oxycontin was found outside of the car and had not been seen there immediately prior by officer, coupled with the passenger's denial of ownership or knowledge of the bag, a search and seizure of the drugs was permissible.

Plain View: So long as the officer is in a position in which he is lawfully entitled to be, anything plainly visible to him falls under this well-established exception. When an officer lawfully observed the presence of a rifle in plain view inside a vehicle, probable cause to believe the vehicle contained contraband allowed the vehicle to be searched without a warrant.

Conclusion

Arizona v Gant, while perhaps defining limits surrounding searches incident to an arrest of an occupant of a motor vehicle, permits those searches under better defined and reasonable circumstance. In its aftermath, Gant has had little, if any, effect on otherwise permissible and long-recognized exceptions to the search warrant requirement. Regardless, law enforcement officers and prosecutors should always expressly and thoroughly articulate the reasons for any warrantless search.

Common Trial Objections

A. VOIR DIRE

Attempting to commit jurors to a specific verdict
Asking about votes in prior cases
Unnecessary probing in juror's background
Questions not going to ascertaining juror qualifications

B. OPENING STATEMENT

Arguing the law
Discussing inadmissible facts
Misstatements of the law
Expressing personal belief on the merits

C. WITNESS QUALIFICATIONS

Competency to Testify (prior to swearing in witness)
Privilege
Non-qualified expert

D. OBJECTIONS DURING DIRECT EXAMINATION

Leading
Not relevant
Hearsay
Calls for Speculation
Calls for a narrative answer
Asked and answered
Cumulative
Prejudicial effect outweighs probative value
Assumes facts not in evidence
Lack of personal knowledge (no foundation)
Misstatement of the record (misquoting the witness)
No proper foundation (specify missing elements)

E. OBJECTIONS DURING CROSS-EXAMINATION

Beyond the scope of direct
Hearsay
Asked and answered
Assumes facts not in evidence
Compound question
Misstatement of the record (misquoting the witness)
Argumentative
Improper impeachment
No good faith basis for the question

F. DOCUMENTS

Identification
Authentication
Relevancy
Best Evidence
Hearsay
Privilege

G. CLOSING ARGUMENT

Improper argument - facts not in evidence
Improper argument - Misstatement of the facts
Improper argument - Misstatement of the law
Stating personal belief in the merits of the case
Asking jurors to place themselves in the party' s position
Deals with improper subject matter - settlement discussions, insurance, right to remain silent, etc.
Unduly prejudicial/inflammatory

H. JURY INSTRUCTIONS

Misstating the facts of the case
Misstatement of the law
Unduly placing weight on certain legal issues or evidence
Failing to give instructions consistent with theory of the case
Failing to give requested instructions
Confusing/ambiguous

**Bad laws are the
worst of all
tyranny... ~Edward
Burk**

VERDICT CASE SUMMARIES

MAY, 2013 - JAN., 2014

State v. Johnson, Kansas Supreme Court, decided May 3, 2013

In July, 2007, Johnson was directed through a DUI check lane. As a result, he was ultimately convicted of misdemeanor DUI. After being convicted of misdemeanor DUI, Johnson raised several issues on appeal, none of which were decided in his favor. Johnson claimed that the charge should have been dismissed because the officer destroyed his notes taken during the investigation once he wrote his formal report. The Court said the trial court properly denied the motion to dismiss because the field notes are not required to be preserved and the defendant did not have any basis to claim bad faith on the part of the officer nor did the defendant make any claim that the report was inaccurate. The Court also held that the defendant did not have the right to have the breath sample that he gave for the Intoxilyzer test preserved by law enforcement, because the defendant's protection from issues with the test are to take advantage of his right to secure his own independent test. The Court held that there was a reasonable basis to have the defendant submit to testing, and that no warrant is required for the Intoxilyzer test because of the implied consent law. For these reasons, the Court found denial of the motion to suppress was proper. Johnson also claimed that the documents showing certification of both the officer and the Intoxilyzer machine should not have been admitted without testimony from whoever issued the certificates. The Court held the

admission of the certificates was proper and did not violate the Confrontation Clause.

State v. Campbell, Kansas Supreme Court, decided May 3, 2013

The Court suppressed marijuana found in Campbell's apartment, which was located when an officer entered Campbell's apartment without a warrant. The State argued the entry was justified due to exigent circumstances, an exception to the warrant requirement. The Court held that the officer's actions were unreasonable and created the exigent circumstances, so there was not a valid exception to the warrant requirement.

State v. Randolph, Kansas Supreme Court, decided May 10, 2013

Randolph argued that his statement to officers should have been suppressed. The Court looked at the established case law, which sets out factors for the Court to consider in determining whether a defendant's statement was voluntary. The issue is not how many factors weigh in the defendant's favor compared to how many factors weigh against the defendant. The Court held that in considering the factors, the court looks at the totality of the circumstances to determine whether the statement was the product of the defendant's free and independent will. The Court upheld denial of the defendant's motion to suppress his statement.

State v. Williams, Kansas Supreme Court, decided May 17, 2013

Williams sought suppression of drugs obtained as a result of his encounter with officers. Williams was walking on

the street alone about 2:30 a.m. Officers pulled up beside him and stopped their patrol car with emergency lights flashing. The two officers stood on both sides of Williams and immediately began asking him questions without first telling him he was free to leave. Considering the circumstances, the encounter was found to not be a voluntary encounter. While the officers were unlawfully detaining the defendant, they obtained his identification and found that he had an outstanding warrant. In the process of arresting the defendant on the warrant, cocaine was found in his shoe. The Court upheld suppression of the drugs, finding that the discovery of the drugs was a direct result of the original unlawful detention.

State v. Hood, Kansas Supreme Court, decided May 17, 2013

Hood waited in hiding inside a restaurant, watching while the owner closed up for the night. The owner put money from the register in a bank bag, along with some of her jewelry. As she was leaving, the owner carried the bank bag along with her purse, which contained her wallet with cash and credit cards inside. Hood took both the bank bag and the purse, and was charged with two counts of theft along with some other charges. The two theft charges were based on the bank bag and the purse having different owners. The Court held that the two theft charges were multiplicitous. The charge of theft is a property crime, and is therefore not based on how many victims there were to the taking. Since the bank bag and purse were taken at the same time in a single act, there could only be conviction for one theft.

State v. Moralez, Kansas Supreme Court, decided May 17, 2013

The Court again looks at whether the eventual discovery of drugs during what starts as a voluntary encounter calls for suppression of the evidence. An officer's attention was drawn to a car parked in a parking lot with its lights on. As the officer approached the unoccupied car, the lights went off. However, the officer saw the tag was expired. Moralez made contact with the officer and told the officer who the owner was. In the course of addressing the expired tag with the owner who came to the scene, the officer directed Moralez not to leave, and then asked for identification, in order to "document" who he talked to. The officer retained the ID, and ran a warrants check, and found that Moralez had an active warrant. When arresting Moralez for the warrant, Moralez disclosed the drugs. The Court held that by retaining the identification and running a warrants check, the officer conducted an investigatory detention without any suspicion of illegal activity. The drugs should have been suppressed. The Court specifically clarified the holding of State v. Martin, a 2008 case (which was also explained in State v. Williams, see above).

State v. Karson and State v. Carlton, Kansas Supreme Court, decided June 21, 2013

In both of these cases the defendants sought suppression of evidence discovered from a search incident to an arrest. For a period of time, the statute in Kansas said that upon arresting an individual, a law

enforcement officer was authorized to conduct a search for evidence of a crime. The United States Supreme Court found such searches to be unconstitutional after the searches in these cases were conducted. The State argued in these cases that the good-faith exception applied and the evidence should not be suppressed. The Court held that the question was whether an objectively reasonable officer would have believed that conducting the search at that time was permitted, and if so then the good-faith exception applies to uphold the searches. In both cases, the Court found the good-faith exception was applicable and suppression was properly denied.

State v. Hall, Kansas Supreme Court, decided June 28, 2013

This case involved the amount of restitution ordered for a defendant convicted of theft from a veterinary clinic. The defendant had taken merchandise, but had also altered computer records to erase outstanding bills she owed for services provided to her pets. To the question of whether to use wholesale cost or retail price as the measure of restitution for stolen inventory, the Court held "it depends." The Court said there is no bright line rule, that a court must weigh and consider all of the evidence to determine a restitution amount that compensate the victim for the actual loss caused by the defendant's crime.

State v. Hand, Kansas Supreme Court, decided June 28, 2013

In this case the victim requested restitution for the amount his homeowner's insurance premium

increased after he made a claim against the policy as a result of the theft Hand committed. The Court of Appeals reversed the awarding of restitution, finding that the increase in premium was caused by the victim's decision to file a claim, rather than caused by Hand's theft. The Supreme Court reversed, again holding that restitution can include factors other than the fair market value of the property, and that the ultimate question is whether there is a causal connection between the crime and the loss suffered.

State v. Bridges, Kansas Supreme Court, decided August 9, 2013

In upholding the exclusion of evidence defendant wanted to offer at trial, the Court held that the evidence was not probative, meaning there was no "logical connection between the asserted facts and the inferences they are intended to establish." The defendant argued that because he suffered from depression he could not have formed the intent to commit the offense, but the only evidence the defendant had to offer was general testimony of what depressive disorder is. The defendant also challenged the admission of his statements to law enforcement. Bridges signed a written waiver of his Miranda rights and made statements to one officer. Within a few minutes of concluding that encounter, Bridges made statements to a second officer in the presence of the first officer. The Court held that a second advising of Miranda rights was not required, because there was no evidence that anything happened in the interim to affect his understanding of his rights. Bridges also claimed that

a statement made on a later date should have been suppressed because he was in custody and was not given Miranda warnings. The Court set out a list of factors to use in determining whether the questioning of an individual is custodial and an interrogation. The list assists with making a determination under the totality of the circumstances.

State v. Jefferson, Kansas Supreme Court, decided August 23, 2013
About a month after a shooting, officers went to talk to Jefferson about his possible involvement in the incident. When they arrived, they saw Jefferson walking toward his car, but upon seeing the officers, Jefferson fled the scene on foot. The officers chased him but did not catch him. They had the car towed and prepared an affidavit for a search warrant to search the car a few days later, although the affidavit was never forwarded to the district attorney or presented to a judge. When they towed the vehicle, they left a note for Jefferson, saying that if he wanted his car back he could call the officer and they could talk. Jefferson did contact the officers and make statements, which he later sought to have suppressed as fruit of the poisonous tree. The Court held that the seizure of the car was illegal, and the note left for Jefferson was a “ransom” note, clearly letting Jefferson know he would not get his car back unless he spoke to officers. Although Jefferson had been advised of his Miranda rights, the Court held that the statements were not attenuated from the illegal seizure and the statements should have been suppressed.

State v. Stovall, Kansas Supreme Court, decided November 22, 2013

The Court has a duty to protect a defendant’s Sixth Amendment right to counsel. The Court’s frustration with repeated delays of a case does not take precedence over allowing an attorney who has a conflict of interest in representing a criminal defendant to withdraw. The district court erred when it refused to allow the defendant’s attorney to withdraw on each of the three motions to withdraw that were made.

State v. Beltran, Kansas Court of Appeals, decided May 3, 2013

Beltran happened to be at a house when officers arrived to execute a search warrant. When officers arrived, Beltran started walking away and had his hand in his front pocket. The officer directed him to stop and to remove his hand from his pocket, and he did not stop nor did he remove his hand. The officer grabbed both of Beltran’s hands and then reached into Beltran’s pocket and found two bags containing drugs and a bag containing money. Beltran filed a motion to suppress the evidence from his pocket. The district court found the officer had probable cause to search the defendant based on his evasiveness (walking away) and his refusal to remove his hand from his pocket. The Court held that was error, that Beltran’s behavior did not give probable cause to search even considering that he was at a residence believed to be used for drug activity. However, the Court held that there was probable cause to arrest the defendant for obstruction, and that the drugs

would have been discovered in the search incident to the arrest. The fact that the officer had no intention to arrest the defendant for obstruction does not matter. The law enforcement action is upheld as long as an objectively reasonable officer would have found probable cause for an arrest.

State v. Hannebohn, Kansas Court of Appeals, decided May 3, 2013

The right to appeal is statutory. To appeal there must be a final judgment. In a criminal case, a final judgment means the defendant has been convicted and sentenced. If there is an issue of restitution, the sentence is not completed and final until a restitution amount is determined.

State v. Sarabia-Flores, Kansas Court of Appeals, decided May 3, 2013

In 2010, the United States Supreme Court decision in Padilla v. Kentucky held that a criminal defendant's Sixth Amendment right to counsel requires an attorney to advise a noncitizen defendant of the deportation consequences of a guilty plea. Sarabia-Flores pled guilty to attempted possession of drug paraphernalia in 2002. In 2011 the defendant was advised that this conviction contributed to his detention until he could be deported (along with the fact that he entered the United States in 1994 on a permit allowing him to stay for 72 hours). The defendant moved to withdraw his guilty plea claiming his attorney was ineffective for not advising him of the immigration consequences. In Chaidez v. United

States, the United States Supreme Court held that Padilla cannot be applied retroactively. Sarabia-Flores' claim of ineffective assistance of counsel was too late to be considered. The defendant also does not have a claim under Padilla and his motion to withdraw his plea was properly denied.

State v. Ewertz, Kansas Court of Appeals, decided June 7, 2013

Ewertz was stopped when an officer observed her vehicle had no taillights, was swerving within its lane and crossed the fog line. Once contact was made, the officer noted an odor of alcohol coming from the vehicle, and several other standard indicators of impairment were attributed to the driver. After investigation at the scene, Ewertz was arrested for DUI. The officer conducted a search of the vehicle, during which he found a makeup bag which contained drug paraphernalia that was in plain view. The defendant moved to suppress the evidence, arguing the officer had no legal basis to search the vehicle. The Court upheld the search, citing Arizona v. Gant, 556 U.S. 332, 343-44, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009), which held that a vehicle can be searched incident to an arrest of its occupant only if either the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search, or it is "reasonable to believe" there will be evidence of the crime the occupant is being arrested for in the vehicle. Rather than finding that an arrest for DUI would always provide a basis to search a vehicle, the Court in this case held that based on the evidence presented, it was reasonable to believe that evidence relevant to

the crime of arrest might be located in the vehicle, so the search was valid. Since the search was upheld, the discovery of the paraphernalia in plain view was also upheld. The plain view doctrine authorizes seizure of evidence if the officer's presence is lawful, if the discovery of the evidence was inadvertent, and if the incriminating character of the evidence is immediately apparent. The motion to suppress was properly denied.

State v. Wetrich, Kansas Court of Appeals, decided June 14, 2013
Wetrich was convicted of domestic battery, kidnapping and other related charges. At his trial, Wetrich attempted to admit evidence that the victim of the domestic battery had previously falsely reported to police that Wetrich forced her to engage in sexual activity with another individual by pointing a gun to her head. The district court did not allow the evidence to be presented to the jury. The Court upheld the exclusion of the evidence. When attacking the credibility of a witness, evidence can be admitted to show the witness has a character trait of dishonesty or lack of veracity. However, only opinion testimony or evidence of reputation for dishonesty can be admitted, not evidence of specific instances of the witness's past conduct.

State v. Vrabel, Kansas Court of Appeals, decided June 14, 2013
A Prairie Village police officer worked with a confidential informant to set up a drug buy from Vrabel. The buy was to take place in the City of Leawood. The Prairie Village officer spoke to a Leawood police officer and informed

them of what was to occur, but the Leawood police department did not participate in the buy investigation. Vrabel asked that the drug evidence be suppressed because the Prairie Village police officer was outside his jurisdiction. Kansas statute provides for specific situations when an officer of a city in Kansas can exercise authority outside the city limits. The relevant provision here allows an officer to act outside the city limits "when a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person." (Note that there are other statutory provisions that apply to officers in Johnson County and Sedgwick County) Giving liberal interpretation to "request for assistance" based on earlier Kansas cases, the Court upheld the officer's actions and found the evidence should not have been suppressed. The Court noted that even though the officer acting outside his jurisdiction is the one who initiated the investigation, the action was still authorized under the Court's interpretation of the statute.

State v. Hardin, Kansas Court of Appeals, decided June 21, 2013
Hardin purchased a new vehicle from a dealer, took the license tag off his old vehicle and displayed it on the new vehicle. An officer on patrol saw the vehicle and ran a computer check of the tag, which showed the tag was registered to a vehicle other than the one it was on. There was no report of either vehicle being stolen, and no other concerns about the operation of the vehicle. The officer stopped the vehicle and several indicators of an

impaired driver were observed. Hardin was subsequently arrested and charged with DUI. He argued there was no reasonable suspicion for the officer to stop his vehicle and moved to suppress all of the evidence from the stop. Even though the display of the tag would have been legal if Hardin had complied with the statutory requirements and was within the grace period provided, there was still a reasonable suspicion that a traffic infraction was being committed. Once the stop was made, the officer was justified in acting on his observations of indicators of impairment. The defendant's motion to suppress was properly denied.

State v. Brewer, Kansas Court of Appeals, decided July 12, 2013

An officer observed a vehicle that appeared to have very dark tint on its windows and also that the temporary license tag displayed on the vehicle appeared to have been altered. The officer followed the vehicle for six or seven blocks, until the vehicle stopped at a residence. Once the vehicle stopped, the driver immediately exited the vehicle and moved quickly toward the house, but did return when the officer asked for his driver's license. After some discussion, it was discovered Brewer had a suspended Kansas driver's license. While a second officer who had arrived prepared a traffic citation, the first officer deployed his drug dog, and the dog indicated drugs were present in the vehicle. Brewer argued that the evidence should be suppressed because the officer followed him for several blocks and didn't make contact until the defendant stopped in a driveway, so

there must not have been reasonable suspicion for a stop. The Court held the stop was proper, even if it was a pretext, because the officer did observe traffic infractions. The defendant further sought suppression of the drug evidence resulting from the warrantless search. Brewer presented evidence that the false positive rate of the drug dog was 35% to 37%, based on real world deployments, so the drug dog's alert should not have provided a basis for the search. The Court held that real world false positive statistics are immaterial and do not invalidate the reliability of the dog's reaction. The Court acknowledged that residual odor can cause a valid reaction from a drug dog, even if the drugs have been removed from the location. While the dog's reaction alone can provide probable cause to search, in this case the defendant also exhibited suspicious and nervous behavior that, when coupled with the drug dog alert, provided a valid basis for the search.

State v. Messer, Kansas Court of Appeals, decided August 23, 2013

Messer was stopped for a traffic infraction at 1:22 a.m. After investigation, he was arrested for DUI. He submitted to an Intoxilyzer test at 2:38 a.m., and his BAC was .147. He asked the officer for a blood test, and the officer told Messer that after he was released on bond he could go get a blood test. Messer left the jail at 3:20, approximately 45 minutes after completing the breath test. The statute provides that someone who submits to an evidentiary test must be given a reasonable opportunity to have an additional test done by a physician

of their own choosing, and the statute further provides that if the officer refuses to permit the testing, then the test that the officer conducted cannot be admitted into evidence. The statute does not require the officer to facilitate the defendant obtaining the test. Here, the defendant was released less than two hours after he was last seen driving and about 45 minutes after he requested a blood test. The defendant had a reasonable opportunity to obtain a test on his own, and suppression of the Intoxilyzer test was properly denied. Messer also argued that the change in the look-back time for counting prior DUIs should apply to his case, since he was sentenced after July 1, 2011, when the change went into effect. The Court held that generally a sentence is based on the law that was in effect at the time the offense was committed when, as in this case, the change affects a defendant's substantive rights, such as the classification of an offense. Messer does not get the benefit of the change in the look back provision.

State v. Acevedo, Kansas Court of Appeals, decided November 22, 2013
In 2009, employees of the Garden City Wal-Mart stopped Acevedo and read him a form they refer to as a trespass form. The form advises the individual that he/she is no longer welcome on any Wal-Mart property and that any future entry could be prosecuted as a trespass. When the employees asked Acevedo to sign the form, acknowledging that he had been advised of the ban and the threat of trespass charges, Acevedo refused to sign and left. When he was later charged for entering the same Wal-Mart store, Acevedo argued that the

unsigned notice was not sufficient to establish that he knowingly and without authority entered Wal-Mart. The Court held that the form was valid even though it did not state a definite term for the ban and even though Acevedo had not signed the form. There was evidence presented from the Wal-Mart employees that the defendant had been orally advised of the ban and the Court found that circumstantial evidence to be sufficient. (Acevedo was charged with aggravated burglary because he committed a theft when he violated the ban from entering Wal-Mart, but the same reasoning would apply to establishing the charge of trespass.)

State v. Richmeier, Kansas Court of Appeals, decided November 22, 2013
Richmeier was stopped for speeding, and a DUI investigation ensued. Richmeier was arrested for DUI, and the Kansas Implied Consent Advisories were read to him. The officer asked the defendant to submit to a blood test, and he agreed to do that. The officer took him to a facility to have blood drawn, and then returned the defendant to the jail for booking. When he returned to the jail, the defendant told the staff at the jail that he wanted to talk to his lawyer because his rights had been violated. The jail officer told the defendant that first he had to arrange for bond. The defendant made bond arrangements and left the jail 15-20 minutes after arriving. Once he left the jail, the defendant did not contact a lawyer and did not obtain another blood test, because it was the middle of the night and he thought his concerns about the violation of his rights could be taken care of in the morning. As stated in the required

advisories, a driver has no constitutional right to consult with an attorney about taking an evidentiary test in a DUI investigation. Once a test is taken, there is a statutory right to consult with an attorney. A driver is also advised of his/her right to secure additional testing and is advised that if he/she wants to do that, it should be done as soon as possible. The defendant had the opportunity to contact an attorney 15-20 minutes after completion of the blood test. The standard the Court used was whether the defendant had a "reasonable opportunity" to contact his lawyer, and based on the evidence in this case, he did. The blood test should not have been suppressed by the district court.

State v. Phillips, Kansas Court of Appeals, decided December 13, 2013 Phillips and another man were observed by an officer in a motel parking lot making several trips from the motel to a vehicle. The officer approached and started talking to them, asking them questions about where they were from and why there were at the motel. The officer asked to pat them down for weapons and the men complied. The officer then asked to search their pockets, and the men allowed that. Other officers arrived and Phillips and his buddy were separated and talked to by officers. The original officer asked to search the vehicle, and consent was given. The officer ran a warrants check on both men and also searched the cell phone of the other man. About 18 minutes into the encounter, an officer asked to search the motel room and there was no objection from either man. Drugs were

located in the room. In looking at whether the seizure of the individuals and the subsequent search were illegal, the Court stated that an officer does not violate the 4th Amendment by approaching an individual and asking them to answer questions. To be a consensual encounter, the law enforcement officer's conduct must convey to the individual that he/she is free to refuse the officer's requests and otherwise free to end the encounter. The Court reviewed a list of factors to consider when determining whether an encounter is consensual. While the Court agreed that the initial contact was voluntary, it found that under the circumstances the encounter quickly evolved into an investigatory detention that a reasonable person would not have felt free to end or to refuse the officer's requests. The motion to suppress the drug evidence should have been granted.

State v. Tims, Kansas Court of Appeals, decided January 3, 2014 Tims was convicted of DUI which was charged as a felony, based on a prior DUI conviction and a prior diversion for a DUI. At the time of sentencing, he successfully moved to have the diversion stricken from his criminal record because he was not represented by counsel in the diversion, and the court sentenced him as a 2nd offense misdemeanor DUI. The State appealed, arguing that the diversion, even if uncounseled, should count as a previous conviction. The Court first held that in a diversion, there is no constitutional right to counsel. The Kansas Supreme Court had previously ruled in State v. Delacruz, 258 Kan. 129, 135, 899 P.2d 1042 (1995), "an

uncounseled misdemeanor conviction that does not result in incarceration may be used in determining a defendant's criminal history under the Kansas Sentencing Guidelines even though it has the effect of enhancing his or her sentence under the guidelines." There is a constitutional right to counsel if the court imposes an underlying jail sentence, even if the sentence is suspended or probation is ordered. But the Court said that diversion is different, because with a diversion there is no adjudication of guilt and no jail sentence is imposed as part of the diversion agreement. There is a statutory right to counsel in a case where diversion is entered (K.S.A. 12-4414(c) for municipal courts), but a defendant is not required to have an attorney to enter a diversion, and the court is not mandated to appoint counsel for a defendant seeking diversion. The holding of *In re Habeas Corpus Application of Gilchrist*, 238 Kan. 202, 708 P.2d 977 (1985) does not apply to a defendant's waiver of his/her statutory right to counsel in a diversion proceeding. For a diversion, there must be a knowing and voluntary waiver of the statutory right to counsel, but that waiver does not need to be certified by a judge. A diversion is a contract between a defendant and the prosecutor, and contract principles apply to interpreting the agreement. The terms of the contract include a statement that an unrepresented defendant is knowingly and voluntarily waiving his/her right to counsel, and the court honors the terms of the contract. Tim's diversion should have been counted as part of his history and he

should have been sentenced for a felony DUI.

State v. Declerck, Kansas Court of Appeals, decided February 7, 2014. Declerck was driving her vehicle in Topeka and merged onto I-470. Witnesses saw her drift from her lane toward the center line, then she moved back to the right and lost control of the vehicle, overcorrected and ended up rolling the vehicle. A passenger was ejected from the vehicle and died from the injuries. Declerck was taken to the hospital and an officer read and provided her with the Kansas Implied Consent Advisory. She refused to consent to having blood drawn for testing for the presence of alcohol and/or drugs. Relying on K.S.A. 8-1001(b)(2), since Declerck had been involved in an accident that resulted in serious injury or death and she had committed a traffic infraction, the officer directed medical personnel to draw blood, and that was done. The test showed the presence of THC, the active ingredient in marijuana, in Declerck's blood. The officer that investigated the accident determined Declerck could have been cited for two traffic infractions but that there was no evidence that impairment contributed to the accident. The State conceded that the officer did not have probable cause to believe Declerck was too impaired to safely operate a vehicle at the time of the accident. To conduct a search, which a blood draw is, the officer either needs a warrant or the circumstances must present an exception to the warrant requirement. Two possible exceptions are consent to the search, and probable cause to believe an offense has been committed along with exigent circumstances. K.S.A. 8-

1001(b)(2) provides that in a situation like this, the “[t]raffic offense violation shall constitute probable cause. . .” The Court held that statutorily creating probable cause based solely on the facts that an accident happened and a traffic infraction was committed without requiring any other evidence of probable cause to believe the driver was impaired is unconstitutional. The State also argued that the Implied Consent law provides a basis for the exception to the warrant requirement by statutorily creating consent by the driver. The case authorities the State relied on that uphold the Implied Consent law involve situations where the officer had probable cause or reasonable grounds to believe that the driver was impaired. In addition, in the cases, the driver voluntarily submitted to testing. The Court does not find that authority persuasive in Declerck’s case, because, again, there was no probable cause to believe she was impaired when driving, and she refused to submit to the test and blood was drawn despite her refusal. The Court held that K.S.A. 8-1001(b)(2) is “unconstitutional to the extent it requires a search and seizure absent probable cause the person was operating or attempting to operate a vehicle under the influence of drugs or alcohol” and that the evidence of the results of the blood test was properly suppressed.

This is a court of law,
young man, not a court of
justice. ~Oliver Wendell
Holmes, Jr.

A View from the Bench By Hon. Karen Arnold- Burger

KMJA President Kehr has asked me to submit a short article on “how an appellate judge sees cases and arguments as opposed to municipal judges” and I was happy to oblige. I have now passed my third anniversary as a judge on the Kansas Court of Appeals so I probably am qualified to opine on

the topic, although 20 years of my life were spent as a municipal court judge. I would like to begin with the similarities. At my swearing in ceremony I borrowed from Robert Fulgham and listed several things I really needed to know to be an appellate judge that I learned in municipal court. I won't list them all, but a few stand out. First, municipal courts are high volume courts in Kansas. In order to function efficiently, municipal judges have to juggle heavy dockets while still devoting sufficient time to cases that need the extra time. The same is true as an appellate judge. The Kansas Court of Appeals is an intermediate appellate court and, as is true for most such courts, we are a high volume court. We have many complex cases to address each month and learning how to juggle the research and writing necessary to dispose of such cases within 60 days of oral argument, which we are bound by court rule to do, is daunting. Second, people are entitled to the same due process on a traffic ticket as they are on a murder charge. Size does not matter when it comes to the Constitution. Next, judges at all levels are confronted with new challenges every day. They are asked to consider new legal theories, they are presented with factual dilemmas that haven't been considered before, and they are expected to make decisions that impact the lives of others. Whether a person is going to spend years in jail or whether a person is going to lose his or her driver's license and necessarily his or her employment and livelihood are both life altering decisions, and the decision of the municipal judge or the appellate judge can weigh heavily on a judge and

the community. And finally, good lawyers make judges look good, both municipal and appellate judges. We are so very fortunate to have good lawyers in Kansas, who help us, through their ethical advocacy, to make better decisions.

Now to the differences. First, I get time to reflect on interesting legal issues. I get to spend days thinking about an issue and reflecting on its importance. I get to enter a carefully reasoned decision that I am sure the trial judge could have entered had he or she not been under the gun. And I get a research attorney to help me muddle through, something that is non-existent for the municipal judge and extremely rare for the district judge. I also get to see how cases are handled all over the state, the good and the bad, although it is mostly good. As an appellate judge, we do not decide the facts and we do not weigh the credibility of witnesses. That is for the trial judge to do. We look solely at the legal issue presented...was the statute applied correctly, was there sufficient evidence to support the verdict, or were the defendant's constitutional rights violated. The majority of the time we affirm the district court. On the times when we reverse we explain why in an effort to help the district judge apply the law correctly in the future. Although in many states if the district court judgment is affirmed, the opinion states simply "Affirmed," in Kansas, we take great pride in issuing a decision in each case with our rationale stated, even if it is not a published decision. Last year we issued approximately 1,400 opinions.

And finally, I no longer have to be the sole" decider," to quote former President Bush. And I say "have to be" because being the sole decision maker is a very difficult and lonely role. A trial judge is focused on making decisions, moving cases along, and keeping an eye on the time clock. No one is there in the heat of the moment to help you. As an appellate judge, I have two other bright and engaged colleagues to discuss the issue with, a luxury that, to me, is the very best part of the job. We are so fortunate in Kansas to have an appellate court with judges that truly like each other and get along. That does not mean we do not have heated arguments over issues, we definitely do, but it is always civil and our mutual admiration and respect for each other remains strong. I am convinced that in the case of judging, a group decision is better than a unitary one. We all bring different opinions and life experiences to cases and the more diverse the panel, the better the decision because differing viewpoints have been considered and addressed. The danger of a unitary approach without a respect and sincere encouragement of differing views is dangerous for decision making at all levels, judicial, legislative and executive. That is why meetings like the annual Kansas Municipal Judges Conference and the State Judicial Conference are so beneficial for solo deciders. It is our opportunity to engage our bright colleagues, discuss common issues and respect and consider differing viewpoints.

At times I miss my days in municipal court. There is no doubt in my mind that most people are going to get their view of the criminal justice system

from their local municipal court. So the role of a municipal judge is very important in our state and I am very proud to have served in that capacity. But I am humbled and honored and excited every day to get an opportunity to serve in the capacity of an appellate judge. And I look forward to seeing all my dear friends at the April conference to talk about judicial ethics and perhaps get a drink or two at the hospitality suite!

**There is no such thing as
justice in or out of Court.**

Clarence Darrow

Song List for Lawyers

Captain Bobby Stout - Jerry Hahn
Brotherhood
Ballad at Hurricane Carter - Dylan
Judge, I'm not sorry - Jorma Kaukomen
Devil's Right Hand - Steve Earl
I Shot the Sheriff - Bob Marley
Folsom Prison Blues - Johnny Cash
Mama Tried - Merl Haggard
Long Black Veil - Chieftains
Alice's Restaurant - Arlo Guthrie
El Paso - Marty Robbins
Stagger Lee - Lloyd Price
Ballad of John & Yoko - The Beatles
Blood on the Floor - Fleetwood Mac

Down in the Willow Garden - Everly Brothers
The Pusher - Steppenwolf
Lawyers, Guns & Money - Waran Zevon
Divorce - Tammy Wynette
I'm Just a Bill - Schoolhouse Rock
I'm in the Jailhouse Now - Soggy Bottom Boys
Copperhead Road - Steve Earl
Joe Hill - Joan Boaz
Tom Dooley - Kingston Trio
Deportee - Woody Guthrie
Lawyer in Love - Jackson Brown
Jailhouse Rock

Legal Publication

(Published in The Derby Informer on April 16, 2014)

**IN THE EIGHTEENTH JUDICIAL DISTRICT
CIVIL DEPARTMENT
IN THE MATTER OF THE APPLICATION OF
JACK SUBLIME BREATHTAKING NGUYEN TO CHANGE NAME TO
JACK SUBLIME SUCCULENT LIPS BREATHTAKING PURSUANT TO
CHAPTER 60 OF K.S.A.
Case No. 14CV0911
NOTICE OF SUIT
THE STATE OF KANSAS TO ALL WHO ARE OR MAY BE CONCERNED:**
You are hereby notified that Petitioner has filed in the Eighteenth Judicial District a Petition to Change Name from **JACK SUBLIME BREATHTAKING NGUYEN** to **JACK SUBLIME SUCCULENT LIPS BREATHTAKING** and that said Petition will be heard or assigned by Judge Jeffrey Goering on the 6th Floor of the Sedgwick County Courthouse, Wichita, Kansas, on the 12th day of May, 2014. If you have any objections to the requested name change, you are required to file a responsive pleading or appear at the hearing and object to the requested name change. If you fail to act, judgment and decree may be entered in due course upon said Petition.

Legal Publication

These are the Dog Days of Municipal Court By Judge Bryce Abbott

If your court is prosecuting misdemeanor drug offenses chances are a law enforcement agency in your jurisdiction has acquired a drug interdiction dog. There is a growing body of case law governing the conduct of these non-commissioned officers of the law. It is only a matter of time before the issue will come before you in the form of a Motion to Suppress.

A. The first thing to note, and it surprises a lot of practitioners, is that a dog sniff does not generally constitute a search. The exposure of items, in a public place, to a trained detector dog does not constitute a search within the meaning of the Fourth Amendment, because the use of the dog neither requires the opening of the item nor exposure of what may be hidden inside. *Illinois v. Caballes*, 543 U.S. 405, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005) (the Fourth Amendment does not require reasonable, articulable suspicion to justify using a dog to sniff a vehicle during a lawful traffic stop); *United States v. Place*, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983) (exposure of luggage to dog at airport); *United States v. Ludwig*, 10 F.3d 1523 (10th Cir. 1993) (sniff of exterior of car in parking lot of motel); *United States v. Daniel*, 982 F.2d 146 (5th Cir. 1993) (sniff of exterior of luggage in custody of common carrier); *United States v. Alpert*, 816 F.2d 958, 961 (4th Cir. 1987) (sniff of luggage detained at airport).

1. Because there is no search, “random and suspicionless dog sniffs are not searches subject to the Fourth Amendment.” *United States v. Ludwig*, 10 F.3d 1523, 1527 (10th Cir. 1993); *United States v. Morales-Zamora*, 914 F.2d 200 (10th Cir. 1990); *United States v. Daniel*, 982 F.2d 146 (5th Cir. 1993) (“a canine sniff of the outside of a bag is not a ‘search’ . . . and a ‘reasonable and articulable suspicion is not required before a DEA agent may use a canine trained in drug detection to sniff luggage in the custody of a common carrier.’ ”).

2. But if dog enters area accorded Fourth Amendment protection to conduct a sniff, it is a search.

a. *United States v. Ludwig*, 10 F.3d 1523, 1527 n. 1 (10th Cir. 1993) (“the government agent may not unlawfully enter an area in order to conduct such a dog sniff. The physical entry itself may intrude on a legitimate expectation of privacy.”).

b. *United States v. DiCesare*, 765 F.2d 890 (9th Cir. 1985) (Police entered apartment and seized it without probable cause; dog subsequently brought into apartment alerted on suitcase. Although a dog sniff is not a search, acquisition of probable cause by a drug dog’s alert during an illegal seizure is not an independent source of probable cause and does not cure prior illegality.).

c. *United States v. Whitehead*, 849 F.2d 849 (4th Cir. 1988), abrogated on other grounds, *Gozlon-Peretz v. United States*, 498 U.S. 395, 111 S.Ct. 840, 112 L.Ed.2d 919 (1991) (Officers having reasonable suspicion occupant of AMTRAK passenger train sleeping compartment involved in drug trafficking received

permission to enter compartment and speak with occupant, but occupant did not consent to entry of dogs to sniff luggage; court recognizes that when officers bring dog into area in which occupant has expectation of privacy, Fourth Amendment protects occupant against unreasonable intrusions, but reduced expectation of privacy in AMTRAK sleeping compartment and minimal intrusiveness of dog sniff rendered entry and activity of dogs on less than probable cause legal.).

d. Compare *United States v. Stone*, 866 F.2d 359 (10th Cir. 1989) (dog alerting after jumping into open hatchback of stopped car may have been a search, but evidence not suppressed because no evidence hatchback opened for purpose of allowing dog in or that officer encouraged dog to enter car), with *United States v. Winningham*, 140 F.3d 1328 (10th Cir. 1998) (officers with reasonable suspicion of transporting illegal aliens opened sliding side door of van to conduct visual search and found nothing, but left door open until drug dog arrived later and jumped in open door and alerted; court holds *Stone* inapplicable because “[a] desire to facilitate a dog sniff of the van’s interior, absent in *Stone*, seems readily apparent here.”), and *United States v. Lyons*, 486 F.3d 367 (8th Cir. 2007) (dog sticking his nose into vehicle through open window did not constitute an unlawful search; officer conducting traffic stop did not direct the occupants to leave the vehicle’s windows open; dog handler did not direct the dog to stick his head through the open window).

3. If the sniff occurs outside an apartment, it may be a search. *State v. Ortiz*, 257 Neb. 784, 600 N.W.2d 805 (1999) (resident has legitimate expectation of some measure of privacy in the hallway outside apartment; dog sniff at threshold of apartment must be based on reasonable, articulable suspicion); *United States v. Thomas*, 757 F.2d 1359 (2nd Cir. 1985) (dog sniff outside an apartment in a nonpublic hallway held to constitute a search. Court focused on the heightened expectation of privacy inside a dwelling).

4. Detaining a motorist without reasonable, articulable suspicion of criminal activity while awaiting the arrival of a dog can render evidence discovered after the dog alerts fruit of the prior illegal detention. *United States v. Wood*, 106 F.3d 942 (10th Cir. 1997); *United States v. Winningham*, 140 F.3d 1328 (10th Cir. 1998) (van stopped on reasonable suspicion of smuggling illegal aliens, but visual inspection of van’s interior and verification that occupants in country legally exhausted the reasonable suspicion so further detention for six minutes while awaiting arrival of drug dog was an illegal detention because officers did not have reasonable suspicion of drug trafficking). In *United States v. Buchanon*, 72 F.3d 1217 (6th Cir. 1995), a trooper stopped to see if two vehicles parked on the side of a highway needed assistance and agreed to call a tow truck. While waiting for the wrecker, three other patrol officers stopped, all displaying flashing lights. A drug dog brought by one officer was led around the vehicles and alerted on both. Before conducting

the dog sniff, officers directed the vehicles' occupants to move away from the vehicles. The court found that, although the officers did nothing to extend the defendants' journey, a seizure occurred:

* * * Although this encounter began as a motorist assistance stop . . . within a few minutes three other troopers had converged on the scene. The number of officers that arrived, the swiftness with which they arrived, and the manner in which they arrived (all with pursuit lights flashing) would cause a reasonable person to feel intimidated or threatened by this type of police presence. . . .

* * * However, because the troopers did nothing to cause the defendants to interrupt their journey does not mean that a seizure did not occur. A person can be detained even when not in motion and proceeding to some destination. . . .

* * * When Trooper Knick gave the order to move back another fifteen feet or so onto the grass, when two troopers stood between the men and their vehicles, and when Trooper Meadows brought Fando [the dog] towards the men and the vehicles, a reasonable person would not have felt free to leave the encounter and a seizure occurred. . . . Bringing the dog out was a show of force because these men did not know why Fando was present until the sniff began; and when the sniff began, it would have been clear to a reasonable person that a drug investigation was underway and that

Kansas' s New Cat Law and the Craziest Crazy Cat Lady Stories

In Wellington, Kan., a new statute bans residents from having more than four cats in their homes. Silly? Maybe. But looking at some terrifying recent stories, perhaps necessary?

The start of the new year ushered in a spate of monumental new legislation. In Maryland, same-sex marriage is legal for the first time. Private insurers in Alaska will be forced to cover autism services for kids and young adults. Californians can no longer demand access to employees' Facebook passwords in order to monitor their extracurricular activities. And in Wellington, Kan., population 8,057, it will henceforth be illegal for a household to contain more than four cats.

Yes, Kansas Is Banning Crazy Cat Ladies.

The new law has bloggers purring in amusement, but a survey of recent animal-hoarding horror stories from around the globe reveals that Wellington may be onto something.

There Was an Old Lady Who Ate a Cat Stew

"You' re so cute, I could just eat you up" takes on a whole new meaning. An 81-year-old Arizona woman named

Lucienne Touboul was arrested in May on charges of animal neglect and cruelty after police were tipped off that she was hoarding 64 cats in her home. It wasn' t the first time Touboul encountered legal trouble. She had an outstanding warrant from a 2010 animal-cruelty case, in which deputies discovered nine frozen cats in her icebox—which she told police she used for cooking a stew. "In 50 years of law enforcement," said Sheriff Joe Arpaio, "I' ve never heard of a case quite like this where an animal lover presumably turns her much-loved pets into stew."

"It' s Not Like Collecting Stamps..."

Indeed, it is certainly "not like collecting stamps," as Nina Kostsovo points out. Kostsovo lives in Siberia in her two-bedroom apartment with 130 cats. "I feel sorry for one, then another comes along, then a third, and on it goes," Kostsovo says, explaining how, since taking in her first cat more than 20 years ago, she now has enough felines to mount five productions of *Cats*. With barely enough room to walk amid the swarm of cats teeming on the floor, at least Kostsovo has taken one key precaution: every male cat in her charge has been castrated, so that there' s no procreation.

SWF Looking for Fun, Companionship, Lots of Cats

Fellas, line up. She's blonde, gorgeous, has a MBA from Villanova...and loves cats. In her eHarmony online dating video bio, Debbie loves cats so much that the mere mention of the creatures brings tears to her eyes. "I love every kind of cat," she sobs. "I just really love cats, and I just want to hug all of them. But I can't because that's crazy." Debbie is self-aware. Of course, no man should be at a loss for what to bring Debbie as a gift on their first date. A cat! "I want them in a basket. And I want them with bow ties. And I want them to be on rainbows and in my bed."

Cat Ladies May Be More Likely to Attempt Suicide

A jarring study that came out of Denmark this past July linked a parasite found in cat feces to personality changes, mental illness, and increased risk of suicide in women who had given birth. The bug, known as *T. gondii*, can cause an infection called toxoplasmosis. Women afflicted by it are one-and-a-half times more likely to try to commit suicide, the researchers said. Thankfully, the study's author acknowledged that the "vast majority" of people wouldn't even know they were infected, and suffer "very subtle" effects.

I'll Have What Kitty's Having

Not getting enough of a cat fix with your dozens of beloveds at home? Then thank Garfield for the latest trend: the cat café. Already a huge hit in China, Taiwan, and Japan (Tokyo alone has more than 100 of them), cat cafés are the Cat Lady's dream—an establishment where one can purchase the standard sandwich, coffee, or tea, only with the added companionship of dozens of cats milling around while you eat. Lady Dinah's Cat Emporium hopes to bring the joys of cat-side dining to Britain, and is launching an Indiegogo.com crowd-funding campaign to raise money for the endeavor. The mission, according to the site: "It's about coming in from the cold to a comfortable wingback chair, a hot cup of tea, a book, and a cat."

The Cat Lady Queen

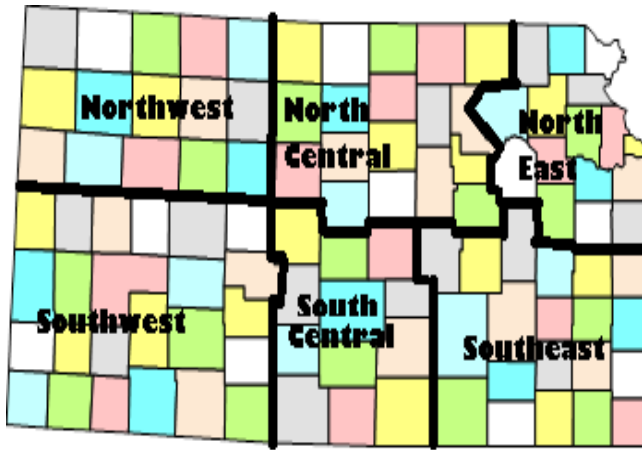
Bow down, Cat Ladies-in-Waiting. Ruth Knueven, Dear Leader of the Cat Ladies, was deemed unfit to own pets back in 2005 when the then-82-year-old was discovered housing 488 cats in her Virginia home. Meow.

By: Kevin Failon

The Verdict

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