No. 10-104520-S

IN THE SUPREME COURT

OF THE STATE OF KANSAS

STATE OF KANSAS

Plaintiff-Appellee

v.

SCOTT P. ROEDER

Defendant-Appellant

REPLY BRIEF OF APPELLEE, PRO SE SUPPLEMENT

Appeal from the District Court of Sedgwick County, Kansas

The Honorable Warren Wilbert, Judge

District Court Case Number 09 CR 1462

Scott P. Roeder, Appellant
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ARGUMENTS—RESPONSES TO THE STATE AND ACLU AMICUS BRIEFS

This brief in reply to the State as Appellee and the ACLU as Amicus is my pro se supplement to the brief my attorney, Rachel Pickering, is writing. I will address only the State's Issues II, V, IX, XII, and XIII.

I. Whether defendant was denied his constitutional right to a fair trial because the district court would not allow him to present his desired defenses to the jury? (State Issues I, II)

State v. Harvey, 202 P.3d 21, 24 (2009) says, quoting *State v. Irons*, 827 P2d 722:

> The Irons decision instructs Kansas courts to take great care before determining the compulsion defense is unavailable to an escapee, as "motions in limine are not to be used to 'choke off a valid defense in a criminal action'" and "'[i]t is fundamental to a fair trial to allow the accused to present his version of the events so that the jury may properly weigh the evidence and reach its verdict. The right to present one's theory of defense is absolute.'" 250 Kan. at 309, 827 P.2d 722.

There cannot be so little evidence that no reasonable factfinder could conclude that it raises a reasonable doubt about the defendant's guilt. This rule requires the court to permit a defense even if the evidence is very slight, however, as shown by the very case cited by the State to the contrary (at 14, 16), *State v. Walters*, 159 P.3d 174 (2007). Walters was at home with his girlfriend, Lentz, the ex-wife of Cochran. Walters said he told Cochran he would shoot him if he ever came onto his property. One day Cochran drove up to Walters' house, got out, and banged on the door. Walters stuck his shotgun out and fired over Cochran's head. Cochran got back into his car and Walters shot him. Walters said he thought Cochran was retrieving a gun "because he was known for it," and that Cochran yelled at him from inside his car, "we will see who laughs last." Because of the rain and the car's tinted windows, Walters couldn't see into the car, but he thought he

had shot Cochran in self defense.

On no more evidence that that, the jury was instructed on Walters' theories of self-defense, defense of another, and voluntary manslaughter (they convicted him of voluntary manslaughter). Thus, little evidence is needed to support a jury instruction.

Walters appealed anyway, because the District Court refused to admit certain evidence. The Supreme Court ruled in his favor on two points and against him on two others. The two points on which Walters won pertained to the admission of evidence that Cochran was dangerous. First, Cochran had recently been in a 15-hour standoff with the local police, so newspaper and TV reporting on the incident could have made Walters view Cochran as dangerous. Second, there existed a photo showing Cochran holding a gun in a car, and Walters had seen that photo.

Both are less relevant than the evidence for Tiller's illegal abortions that was excluded in my case. Wouldn't the testimony of a former attorney-general or criminal prosecutions be stronger evidence than news stories about an unrelated violent incident or a photograph showing the victim had once held a gun in his car?

The State also brings up (at 16) *State v. Harvey*, 202 P.3d 21 (2009), to make the point that with respect to a compulsion defense, "failure to make an affirmative showing on any of the five conditions cuts off defendant's right to the defense" (at 17). Harvey argued that he was compelled to escape from prison because gang members were threatening him and he had no other alternative to avoid imminent harm. The condition upon which he lost was that he did not try to minimize his illegal act: he did not try to contact the authorities before he was recaptured to see if they would protect him if he returned to prison.

The only condition for my desired defenses that the State says in this section of its brief (pp. 14-17) lacks evidence is the harm's "imminence". I wished to present evidence that if I did not kill Tiller, he would perform illegal abortions, unlawfully killing babies. I argue that the harm was "imminent" because Tiller had done this regularly enough in the past that he would do it again, something his medical records could confirm. I did not claim the harm would be "immediate". I killed him on a Sunday, and the harm would not have occurred till Monday. But the harm was "imminent", because unless I acted immediately it was sure to occur--- at least viewing the evidence in the light most favorable to me, the relevant standard here on appeal. The State says, at 11,

> In the instant case, Dr. Tiller was at church when defendant launched his attack, the fact that defendant believed his victim may have been performing abortions in twenty-two hours from the attack, changes nothing.

That is the crux of the disagreement. The State argues that even if everyone is agreed that Dr. Tiller was going to kill people twenty-two hours in the future and there was no other way to stop him except by the defendant shooting him, the defendant is still guilty of murder, even though he would be innocent if the time gap were two minutes instead. *Harvey* run contrary to the State's view. The *Harvey* Court said:

> First, the defendant had to face a specific threat of imminent infliction of death or great bodily harm. At the first trial, the defendant testified he "was in a state to believe that [he] was going to be killed that day because of some things in [his] past." According to the defendant he had been "running from facility to facility" from the skinhead gang, that one of the gang leaders had recently arrived at the facility, and on the day of the escape, two gang members approached him but were stopped when a corrections officer came into the area. The defendant testified, "I knew what was going down. I didn't have to think twice about it."
>
> At the second trial, the defendant testified the gang members approached him the day of the escape "with some type of vendetta" against him and threatened "to do great bodily harm at me, threatened to take my life at the time." According to the defendant, this incident scared him and made him want to leave the facility.

The defendant's testimony, viewed in the light most favorable to him, satisfies the first requirement.

Thus, in *Harvey* imminence did not require immediacy. It was sufficient, to be potentially legal, that gang members had threatened to kill Harvey, in the indefinite future, for his escape from prison, that same day. I do not know whether Harvey specifically used the word "imminent" or not, but it was the legal concept he needed and he obviously implied it when he said that the gang members would kill him unless he escaped. A claim of imminent harm is obviously implied by my evidence too, was explicit in my January 8, 2010 pro se brief (pp. 88-100), and the claim will be made explicit to the jury if my counsel is allowed to explain it.

Contrast this with the two trials in *State v. White*, which the State cites for the idea that imminent harm means harm that will occur in less than twenty-two hours (at 15-16). White drove to his son-in-law's workplace and killed him because he was upset over losing custody of his grandchild to someone he thought was abusive. White produced evidence of past abuse by his son-in-law, evidence he had used unsuccessfully in the custody battle but had not reported before custody became an issue. In his first trial, the jury was instructed on voluntary manslaughter based on an unreasonable but honest belief of White's that justified the use of deadly force in defense of his grandson. *State v. White*, 279 Kan. 326 (2005) (*White* I). White lost, not because the court denied the instruction, but because the jury rejected the defense. In the second trial, the District Court denied the voluntary manslaughter instruction and the Supreme Court upheld the denial on the grounds that the harm was not imminent. *State v. White*, 284 Kan. 333 (2007) (*White* II).

The harm White purported to fear was different from in my case. The difference was not in lack of immediacy, but I do not think that is what mattered. Although White killed

his son-in-law at Wal-Mart, it is hard to believe that the Court would have reached the opposite result and ruled the harm was imminent had White waited a few hours and killed his son-in-law at home with the grandson present and vulnerable. Rather, the harm was sufficiently vague that it was not clear it still existed, if it ever did, or that it could not be averted by means other than force. White could have threatened his son-in-law, or the child's mother might have prevented future abuse once the custody battle alerted her to it, or the son-in-law might have stopped it of his own volition after hearing White's public claims. Nor was the harm sure to occur if White did not kill his son-in-law; he could have kidnapped his grandson instead. When harm arises suddenly, it may disappear just as suddenly. To be imminent, the danger should be one that will not dissipate unless the defendant takes the preventative action in question, as with the gang threats of the 2009 *Harvey* case or the weekly abortions of Dr. Tiller.

I would like also to point out a possible source of confusion. The State notes on p. 66 that its cite to *White II* is quoting from a California case and a federal case involving California law, but it might not be clear that the *entire* passage is made up of quotes from California. The first part, for example, is quoted as:

> The *White* court noted, "[f]ear of future harm - no matter how great the fear and no matter how great the likelihood of the harm - will not suffice [,]"

What *White II* actually says (*State v. White*, 284 Kan. 333 (2007) at 352) is:

> The *In re Christian S.* court held that "[f]ear of future harm-no matter how great the fear and no matter how great the likelihood of the harm-will not suffice." 7 Cal. 4th at 783.

Perhaps the White court meant to fully endorse what the California court said, but perhaps not.

II. Whether the district court erred when it refused to instruct the jury with respect to the necessity, defense-of-others and voluntary manslaughter defenses? (State Issues V, XII, and XIII)

I do not argue that having sincere beliefs entitles me to break the law. I believe that abortion is evil and the Supreme Court's rulings on it have little to do with the Constitution, but if I cannot persuade others of this, my sincerity is irrelevant to whether the State should punish me if I've acted illegally. At most, my sincerity should only matter at the sentencing stage--- see below. Rather my necessity, defense-of-others, and voluntary manslaughter defenses are based on accepting the current U.S. and Kansas abortion statutes and caselaw without revision in either direction, either to be more anti-abortion or less anti-abortion. The ACLU brief says, at 6, that:

> In an unbroken line of cases – reaching from Griswold v. Connecticut, 381 U.S. 479 (1965), in 1965, to Lawrence v. Texas, 539 U.S. 558 (2003), in 2003 – the U.S. Supreme Court has repeatedly affirmed these principles: that the right to decide whether and when to have a child is within the constitutionally protected zone of privacy; that it is essential to dignity, self-determination, and women's equality; and that the Due Process Clause of the U.S. Constitution therefore protects a woman's right to choose abortion.

That is wrong. The Supreme Court in *Roe v. Wade*, 410 U.S. 113, 158 (1973) specifically said that states could enact statutes criminalizing abortion in the third trimester. Kansas has done that. No federal or state court has struck down the Kansas statute. The ACLU makes no argument for the Court to overturn existing law and declare the Kansas abortion statute unconstitutional.

The briefs of the State and the ACLU imply that my defense relies on all abortion being unlawful. I believe aborting babies is evil and I think laws against all abortions would be constitutional, but I am not arguing that my *beliefs* should trump the courts. I

believe Roe v. Wade's "collapse" clause and 18 U.S.C. 1841(d), as I argue in my January 2012 and January 2010 briefs, should govern this Court's evaluation of the illegality of abortion as it weighs my right to present my defense, but I neither ask nor expect the Court to rule on the basis of what I believe. (Other than the extent to which it weighs the "honest belief" element of voluntary manslaughter.) I pray only that the Court will acknowledge, address, and follow the law. I have really presented a multi-faceted, comprehensive defense, which I hope this Court will address, rather than the absurd argument attributed to me by the ACLU and the State, which never entered my mind, that I must be found innocent because I *feel* that I am innocent.

My necessity, defense-of-others, and voluntary manslaughter defenses have the support of undisputed Kansas law, by which killing viable babies is illegal except under extraordinary circumstances. Thus, *City of Wichita v. Tilson*, 253 Kan. 285, 855 P.2d 911 (1993), with its rejection of the defendant's defense that he sincerely opposes abortion, is irrelevant to my case.

The briefs of the State and the ACLU therefore turn from *Tilson* to *City of Wichita v. Holick (*State p. 68). The ACLU brief cites in its list of authorities and in the text, at ii and at 11, the published per curiam Kansas Supreme Court opinion, *City of Wichita v. Holick,* 151 P.3d 864, 2007 WL 518988 (Kan. App. 2007). That opinion is one word long: "Affirmed." The opinion the ACLU and State brief actually argue from is a different one: the unpublished Court of Appeals opinion, *City of Wichita v. Holick,* (Unpublished Opinion No. 95,340, Issued February 16, 2007). (The State does cite it correctly).

Kansas Rule 7.04 says, in part:

> "(2) Unpublished memorandum opinions of any court or agency (i) are not binding precedents, except under the doctrines of law of the case, res judicata, and collateral estoppel. (ii) are not favored for citation. But unpublished memorandum opinions may be cited if they have persuasive value with respect to a material issue not addressed in a published opinion of a Kansas appellate court and they would assist the court in its disposition. (iii) must be attached to any document, pleading, or brief that cites them."

I am thankful to the State for following Rule 7.04 and including the opinion in an appendix, since neither Lexis nor the Kansas Supreme Court website has it easily available.

Holick can be cited for persuasive value, but its persuasiveness is slight. Indeed, the Court of Appeals was wise not to publish it. The ACLU quotes *Holick* as follows:

> [A] fair reading of the record reveals that [Defendant's] primary purpose . . . was to prevent all abortions, including those women have a right to obtain under [the] United States Constitution and Kansas Law." City of Wichita v. Holick, 151 P.3d 864, 2007 WL 518988 (Kan. App. 2007) (holding necessity defense unavailable when defendant sought to prevent both lawful abortions and allegedly unlawful post viability abortions).

A lawful act is not made unlawful by the intermingling of good and bad motivations, or, indeed, even by its motivation being entirely bad. If I attempt to enforce a contract, but my motive is greed, the court will not turn me away. If John Doe kills someone in self-defense, the court will not convict him of murder anyway because it finds he disliked his assailant. If it be granted that a defense would lead to a defendant's acquittal because he had to act to prevent a legal harm, his opinions about the non-legal harms prevented is irrelevant.

Whether a correct holding on this point would have reversed *Holick* or not, the incorrect holding has no precedential force and lacks persuasive force.

The State next introduces another idea from *Holick*: that it was not necessary for me to

shoot Dr. Tiller because sometimes women can be persuaded not to abort. I grant that, but the other side of the coin is that most women cannot be so convinced, at least by last-minute conversations on the street. If I were to shoot a mass killer inside a school, defense-of-others would not be inapplicable just because some of the threatened students had escaped through a window and I could have perhaps saved a few more that way instead of shooting the killer.

The State makes another argument against my being allowed to introduce evidence as to the necessity of my killing Dr. Tiller: that he had already been prosecuted on charges of illegal abortion and not been convicted. That argument confuses standards of proof. In prosecuting Tiller, the State had to prove that he was guilty beyond a reasonable doubt and to meet the technical requirements of a criminal prosecution, which it failed to do. In prosecuting me, the State must in effect prove that Tiller was *innocent* beyond a reasonable doubt.

That is, the State's challenge is to persuade a properly instructed jury beyond a reasonable doubt that none of the abortions I prevented would have been "unlawful force" – the element common to K.S.A. 21-3211(a) and K.S.A. 21-3403(b) – as defined by the laws under which Dr. Tiller was charged by two successive Attorney Generals.

A factfinder who agreed that the probability that Tiller had unlawfully killed viable infants was 50-50 would acquit Tiller but acquit me too. Thus, the fact that prosecutors thought there was enough evidence to justify trying Dr. Tiller would have been helpful to me in my trial. Indeed, even the jurors who acquitted Dr. Tiller might be useful witnesses for me. Despite their acquittal of Tiller they might quite lawfully believe he was more likely than not guilty. And, indeed, they might the more so, now that Dr. Neuhaus,

whose second opinions Dr. Tiller relied on in the abortions at issue, has lost her medical license because of the looseness of her pre-abortion mental health exams (she only recorded yes/no answers in a computer program and relied on the computer-generated diagnosis, *Kan. doctor loses license over abortion referrals,* John Hanna, Associated Press, June 22, 2012, http://cnsnews.com/news/article/kan-doctor-loses-license-over-abortion-referrals).

III. Whether the district court erred in its application of the hard 50 sentencing rules? (State Issue IX)

The State says that the standard of review for hard-50 sentencing is "whether, after a review of all the evidence, viewed in the light most favorable to the prosecution, a rational factfinder could have found the existence of the aggravating circumstance by a preponderance of the evidence.' [Citations omitted.]" *State v. Boldridge*, 274 Kan. 795, 808, 57 P.3d 8 (2002). That only refers to the court's role as factfinder, where the standard of review is the same as with any factfinding. My disagreement is not with the District Court's view of the facts or of how it balanced the facts but with how it interpreted the law.

Boldridge itself was an easy case for the hard 50, involving no deep question of how to categorize facts. Boldridge recruited three men to kill her ex-husband. She gave them a shotgun and ammunition and let them into the house, where one of them killed her sleeping husband with one blast. A co-worker testified that Boldridge had said she would benefit if her ex-husband was dead because she'd get social security benefits for their son. Boldridge had inquired about such benefits before the murder, and applied for them

soon after it.

Boldridge argued against the court's acceptance of the aggravating circumstance of "financial gain" and rejection of the mitigating circumstance of "minor role in the crime." Given the facts found by the district court, she could not but lose. The appellate court implictly accepted that social security benefits for one's child were "financial gain" and that recruiting, arming, and directing a murder was more than a "minor" role.

Is it a question of law, or of fact, whether it is "heinous" for a murder to be committed in a church lobby? One way to attack the question is to ask whether we would be upset if the district court were to reach opposite answers to that question in successive cases. I think we would. It is not like two factfinders looking at similar murders and deciding one was heinous and one was not because of the number and type of knife blows in each case. That involves a balancing of facts hard to judge by someone not at the trial. Here, the question is theoretical: is it, or is it not, heinous for a murder to be committed in a church lobby? An appellate court can answer that and give useful guidance to district courts that will help them be consistent with each other.

In *State v. White*, 279 Kan. 326, 332 (2005), the Supreme Court says:

> we have observed that even abuse of discretion standards can sometimes more accurately be characterized as questions of law requiring de novo review. See *Kuhn v. Sandoz Pharmaceuticals Corp.*, 270 Kan. 443, 456, 14 P.2d 1170 (2000) (district court failed to correctly apply the Frye standard). There we stated, "Questions of law are presented when an appellate court seeks to review the factors and considerations forming a district court's discretionary decision." 270 Kan. at 456.

Koon v. United States, 518 U.S. 81, 100 (1996), which *Kuhn* cites approvingly, says

> "Little turns, however, on whether we label review of this particular question abuse of discretion or de novo, for an abuse-of-discretion standard does not mean a mistake of law is beyond appellate correction. A district court by definition abuses its discretion when it makes an error of law. . . . The abuse-of-discretion standard

> includes review to determine that the discretion was not guided by erroneous legal conclusions."

Thus, how a District Court categorizes facts into aggravating and mitigating factors is to be reviewed de novo, even though the factfinding itself is to be reviewed with deference.

Let us turn now to the specifics of my case. The District Court listed three aggravating circumstances: stalking, preparation for the murder to be heinous, and committing the murder in a church lobby. It denied two mitigating circumstances: lack of a prior criminal history, and lack of capacity to appreciate the criminality of the action.

Stalking. Though I studied Dr. Tiller's movements, he was completely unaware of my existence, so my conduct was not criminal. The State counters that for conduct to be an aggravating factor it need not be criminal stalking. *State v. Johnson,* 159 P.3d 161, 168 (2007) says that though Johnson did not repeatedly follow his victim, in one incident:

> Johnson confronted Griffin, prevented her from leaving in her vehicle by jumping on the hood, and refused to disengage when confronted by a security guard. As described by the guard, Johnson's conduct was obviously intended to intimidate, if not terrorize, Griffin. Under such circumstances, one can reasonably infer that Griffin "was aware of the possibility of the violence which awaited . . . her," regardless of whether we label the conduct as a stalking, a criminal threat, or other conduct manifesting an especially heinous, atrocious, or cruel behavior.

Johnson makes the point that the conduct need not be criminal, but it also makes the point that the conduct must be harassing. Merely following someone's movements, as I did, is neither criminal nor harassing.

Moreover, the *Johnson* District Court made it clear that even harassment would not by itself have justified the hard 50:

> And the reasons and rationale for the Court's decisions are this; the prior stalking,

> the violence of the relationship, how it had transformed from a normal relationship into a violent relationship, but I suspect most of it is the—the brutal [ferocity] of the attack. ... The defensive wounds alone show that she was alive and was able to contemplate her death while—while the defendant was attacking her....One thrust could have ended her life and we wouldn't be talking about a hard 50.

See also *State v. Kleypas*, 282 Kan. 560, 566-69, 147 P.3d 1058 (2006), which says that evidence that a defendant stalked the victim and the victim was aware of the possibility of violence is relevant to whether a murder was committed in an especially heinous, atrocious, or cruel manner for purposes of the death penalty.

Planning for a heinous murder. The statute lists as an aggravating factor: "(2) preparation or planning, indicating an intention that the killing was meant to be especially heinous, atrocious or cruel". L.1999, ch. 138, sec. 1 (H.B.2440). The District Court seems to have misread this statute, perhaps because it includes a confusing comma. If read literally, it says that any killing with preparation or planning indicates an intention that the killing be especially heinous, atrocious, or cruel, and so deserves the hard 50. This is clearly wrong. It is quite possible to prepare and plan for a run-of-the-mill murder, and there is no logical connection between planning and atrociousness. Most premeditated killings involve planning and preparation, yet few are punished with the hard 50.

The only reasonable interpretation of the statute is that an aggravating circumstance is that the murder was planned to be especially heinous, rather than turning out that way by accident— e.g., the murderer deliberately set out to kill a child or dismember a victim rather than deciding at the last minute or doing it unintentionally. My intent was to kill Tiller as simply as possible, as noted by the District Court in the journal entry quotes in the State's brief at 48-49: I considered and rejected hurting Tiller's arms, or running my

car into his, or sniping from a distance. All these are signs that I planned the killing, but they are also signs that I merely wished to stop his illegal abortions, not to make his death more fearsome than any death must be. Contrary to what the State says at 54, there is no evidence that "the killing was an act of violence designed to create terror in others." Rather, I did no more than necessary to ensure that Tiller would stop killing. If I had wanted to scare other abortionists, wouldn't I have shot him repeatedly? Or in a gruesome way? Or You-tubed myself doing it? Or taped a threatening sign onto his body? Or done one of the myriad other acts that would sensationalize the killing?

Committing murder in a church. The District Court does not have unlimited discretion to denote an action as heinous. Categorizing an action must be done in light of how the Supreme Court categorizes it; otherwise, whether something is an aggravating factor is up to the whim of the particular District Court.

I don't think any Court can have any more reverence for church than I do. But consider the notorious context of the choice before me. The 60,000 babies Tiller said on his website that he had killed. Tiller's notoriety as the world's leading killer of very late term babies. The struggle between Tiller and all three branches of the U.S. government as well as the Kansas legislature and two Kansas Attorney Generals in a row, substantially focused on Tiller's evasions of their restrictions. That, plus the ruling out, by Tiller's massive security measures everywhere else, of any other opportunity. How much less heinous would inaction have been, than the only possible action? Can any killing location be ruled especially heinous under this law, when no other location was possible?

Criminal history. The District Court ruled that it was false that I "had no significant history of prior criminal activity" (K.S.A. 21-4637(a)). The State says I "had

a considerable history of prior criminal activity as evidenced by the number of instances where he was ready and willing to kill Dr. Tiller" (at 56). If thinking about killing someone else is "criminal activity", a lot more people should be in prison. I am charged with the murder of Dr. Tiller already. Planning the murder is not a separate crime, if it is a crime at all, nor is thinking about it.

Appreciation of the criminality of the act. Another mitigating factor is "capacity to appreciate the criminality of his conduct or to conform to the requirements of law was substantially impaired" (K.S.A. 21-4637(0)). The State's brief says that "Defendant knew what was criminal and what was not criminal and simply chose to act based upon his personal beliefs".

Wrong. I hope it is clear that I sincerely believe what I did was *not* criminal according to the laws of the State of Kansas. That is what my defense is all about.

The Supreme Court, and a jury on retrial, may decide that I am wrong in so thinking, but that does not alter the fact that I think it.

The reason not appreciating the criminality of the act is a mitigating factor is presumably that though ignorance of the law is no defense to conviction, it at least lessens culpability if the defendant didn't think what he was doing was criminal.

I knew there was a strong risk I'd be convicted of murder if I defended Dr. Tiller's victims, but I only thought that because I know prosecutors and judges can be tempted to mistakes when the defendant's moral beliefs are different from theirs.

I hope the Supreme Court justices will put aside whatever beliefs they may have about abortion and just follow the law.

On that, my defense depends.

Conclusion

For the foregoing reasons, this Court should order a new trial with instructions that the Court's errors not be repeated.

Respectfully submitted,

(Signed)_____
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Certificate of Service

The undersigned hereby certifies that service of the above and foregoing brief was made by delivering two copies each, to:

David Lowden, Chief Attorney, Appeals Div., 1900 East Morris, Wichita, KS 67211;
Derek Schmidt, Attorney General, Kansas Judicial Center, Topeka, KS 66612;
Rachel Pickering, #21747, Kansas Appellate Defender Office Jayhawk Tower, 700 Jackson, Suite 900 Topeka, Kansas 66603;

and 16 copies to the

Kansas Supreme Court, 301 SW 10th St, Kansas Judicial Center, Topeka KS 66612.

The date of my signing this Certificate of Service and the signature page of the brief is the ___ day of January, 2012. However, the date of mailing is later because I am not allowed to receive more than an ounce of mail at a time by the Lansing mail room. This means I am not allowed to receive a complete bound typewritten copy of my brief, prepared with outside help, which I can then send to you from here; so I must sign the signature pages and mail them to my outside help, to be copied and assembled with the rest of the briefs, for mailing from there. Since I have no control over how promptly my jailers will mail the signature pages, or how long the post office will take to get them to my outside help, the date of mailing of these briefs can't be filled out by me but is entered by my outside help. The date of actual mailing is the _____ day of January, 2012.

(This proof of service was obviously not updated since the January brief, but this file is the only one we have left.)

Signed _____
Scott P. Roeder