IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

THE STATE OF KANSAS,	)	
	)	
	)	
Plaintiff,	)	
	)	
vs	)	Case No. 07 CR 2112
	)	
GEORGE R. TILLER,	)	
	)	
	)	
Defendant.	)	

OPINION

This matter comes on for hearing upon the defendant's motion to dismiss or suppress. The defense is asking that the case be dismissed or in the alternative that all evidence should be suppressed that was obtained from former Attorney General Phill Kline's inquisition. It is being alleged that Kline engaged in selective prosecution of Dr. Tiller and outrageous governmental conduct during the investigation.

The court will not attempt to summarize all of the testimony or exhibits that were introduced during the lengthy hearing, but will make reference to portions thereof as each of the legal arguments are addressed. The Kansas Supreme Court is already quite aware of the facts in this case from the prior appellate cases of ***Alpha Medical Clinic v. Anderson,*** 280 Kan. 903 (2006) and ***Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc. v. Kline,*** 197 P.3d 370 (Kan. 2008).

This case is the product of the initial investigation that was started under the administration of Phill Kline as Attorney General for the State of Kansas who was sworn into office in January 2003. As will be discussed later, this case was filed under the subsequent administration of Paul Morrison who defeated Phill Kline in the election of 2006. After Paul Morrison assumed the office of Attorney General in 2007 his administration reviewed the investigative files of the prior administration, resulting in the present charges. During the course of the prosecution of this case, Paul Morrison resigned in January 2008. Stephen Six was then appointed to fill out the term of Morrison.

The State argues that if the Court should conclude that there was misconduct on the part of Kline or Morrison in the investigation or prosecution of this case that it would be of no avail to punish the current administration through the dismissal of this case or suppression of evidence. The defense maintains that the exclusionary rule requires the sanctions to be administered against the current prosecution regardless of which administration caused the violation citing the principle set forth in ***Elkins v. United States,*** 364 U.S. 206 (1960). The first task is to determine if there is in fact a violation at all.

SELECTIVE PROSECUTION

The defendant is alleging that former Attorney General Phill Kline engaged in a selective investigation of him which is an equal protection violation under the United States Constitution. He is alleging that the basis for this selection is that he is a provider of abortion services, and more specifically late

term abortions, and that Kline is an avowed abortion opponent. The prosecution of this case is the end product of an investigation that commenced in 2003 for the initial purpose of determining whether there were violations of the mandatory child abuse reporting requirements.

The United States Supreme Court has recognized that selective prosecution violates a person's right to equal protection under the laws. The State has conceded that this principle would apply whether it is selective prosecution or selective investigation. The stage of the proceeding would not effect the application of the principle.

The defense is under considerable burden to establish a selective prosecution violation. In the United States Supreme Court case of ***United States v. Armstrong,*** 517 U.S. 456 (1996) this burden is discussed and the method of making this determination is analyzed:

> "A selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution. Our cases delineating the necessary elements to prove a claim of selective prosecution have taken great pains to explain that the standard is a demanding one."

Armstrong, 517 U.S. at 463.

The ***Armstrong*** court, in citing the previous decision of ***United States v. Chemical Foundation, Inc.,*** 272 U.S. 1 (1926) further explained that "the presumption of regularity supports their prosecutorial decisions and that in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties." ***Armstrong,*** 517 U.S. at 464.

To establish a selective prosecution claim, the defendant must demonstrate that the prosecution "had a discriminatory effect and that it was motivated by a discriminatory purpose". ***Wayne v. United States,*** 470 U.S. 598, at 608 (1985). This requires that the defendant establish (1) that similarly situated individuals were not prosecuted and (2) that the decision to prosecute was "invidious or in bad faith". ***United States v. Olvis,*** 97 F.3d 739 at 743 (4th Cir. 1996).

Most of the leading cases on selective prosecution cited by the defendant involve constitutional violations based upon racial discrimination. ***Yick Wo v. Hopkins,*** 118 U.S. 356 (1886); ***United States v. Correa-Gomez,*** 160 F. Supp. 2d 748 (E.D. Ky. 2001); ***United States v. Cuevas-Ceja,*** 58 F. Supp. 2d 1175 (D. Or. 1999). However selective prosecution is not limited to discrimination based upon race or religion, but also upon the exercise of other constitutional rights. ***United States v. McDonald,*** 553 F. Supp. 1003 (S.D. Tex. 1983); ***State v. Parrish,*** 567 So. 2d 461 (Fla. App. 1 Dist. 1990); ***State v. Norris,*** 769 N.E. 2d 896 (Ohio App. 1 Dist. 2002).

As an abortion service provider, the defendant points out that the United States Supreme Court has "long recognized and protected…the fundamental right of a pregnant woman to obtain a lawful abortion without government imposition of an undue burden of that right." ***Alpha Medical Clinic v. Anderson,*** 280 Kan. 903, 920 (2006), citing ***Planned Parenthood of Southeastern Pa. v. Casey,*** 505 U.S. 833, 874-78 (1992).

Phill Kline testified at the evidentiary hearing that he would like for all abortions to be illegal. He believed that the abortion laws were not being

enforced. He also expressed disagreement with the prior Attorney General opinion regarding the reporting requirements, but that he followed it in his investigation. He denied that his views on abortion were used to target Dr. Tiller in his investigation. The Attorney General's office reportedly received anonymous complaints that Dr. Tiller performs abortions on females under 16 years of age without filing a report with SRS as required by law.

To evaluate whether the defendant was selectively investigated it must first be determined if others that are similarly situated were not investigated. The defendant complains that there are a number of mandatory reporters set forth in the statute and Kline failed to investigate any of them. The record does reflect that Kline investigated another abortion services provider in the northeastern part of the state that appears to be the other major abortion provider in the state. However that provides little assistance in this analysis since it is also a member of alleged selected group. There was some investigation later of live birth providers and that will be discussed later.

There is some guidance in the law in determining who is similarly situated for the purpose of this analysis. "If all other things are equal, the prosecution of only those persons exercising their constitutional rights gives rise to an inference of discrimination. But where the comparison group has less in common with defendant, the factors other than the protected expression may very well play a part in the prosecution." ***United States v. Aguilar,*** 883 F.2d 662, 706 (9th Cir. 1989). "A similarly situated offender is one outside the protected class who has committed roughly the same crime under roughly the same circumstances but

against whom the law has not been enforced." ***U.S. v. Lewis,*** 517 F.3d 20, 27 (1st Cir. 2008). "The focus of an inquiring court must be on factors that are at least arguably material to the decision as to whether or not to prosecute. Material prosecutorial factors are those that are relevant – that is, that have some meaningful relationship to the charges at issue or to the accused – and that might be considered by a reasonable prosecutor." Id. at 27. The factors to be considered include the strength of the case, the general deterrence value and the government's enforcement priorities. ***United States v. Smith,*** 231 F.3d 800 (11th Cir. 2000).

To determine those that are similarly situated it is necessary to review the law that is being enforced to see who is potentially affected. K.S.A. 38-1522 provides:

> "(a) When any of the following persons has reason to suspect that a child has been injured as a result of physical, mental or emotional abuse or neglect or sexual abuse, the person shall report the matter promptly as provided in subsection (c) or (e): Persons licensed to practice the healing arts or dentistry; persons licensed to practice optometry; persons engaged in postgraduation training programs approved by the state board of healing arts; licensed psychologists; licensed professional or practical nurses examining, attending or treating a child under the age of 18; teachers, school administrators or other employees of a school which the child is attending; chief administrative officers of medical care facilities; registered marriage and family therapists; persons licensed by the secretary of health and environment to provide child care services or the employees of persons so licensed at the place where the child care services are being provided to the child; licensed social workers; firefighters; emergency medical services personnel; mediators appointed under K.S.A. 23-602 and amendments thereto; juvenile intake and assessment workers; and law enforcement officers."

Obviously, the potential pool of violators would have to be selected from the statutory list of mandatory reporters. The defendant points out several groups of potential targets that were not investigated by Kline. First, the defense points to law enforcement officers from Sedgwick County. The Attorney General's office had received information that during an 18 month period from January 2002 through June 2003, the Sedgwick County Exploited and Missing Child Unit (EMCU) had received 771 reports of child abuse from law-enforcement officers, while during that same time, SRS had received only 21 reports from Sedgwick County law enforcement officers. The defendant alleges that this indicates that law enforcement officers in Sedgwick County had routinely shirked their reporting duties. There is no evidence that Kline ever attempted to investigate whether the officers were underreporting.

There is a major flaw in the argument as it relates to law enforcement officers in Sedgwick County. The reports that were received by the EMCU were in effect reports to the state department of social and rehabilitation services. The Exploited and Missing Child Unit is comprised of representatives from the Wichita Police Department, Sedgwick County Sheriff, Sedgwick County District Attorney and social workers from SRS. When there is a report to law enforcement in Sedgwick County of a suspected child sexual abuse case, it is referred to the EMCU for investigation. That unit assigns a team comprised of a law enforcement officer and a social worker from SRS to investigate the complaint. This unit was formed so that the objectives of care for the child and enforcement of the criminal law can be accomplished with one investigation. So

if a law enforcement officer reports a violation to the EMCU, he is in fact reporting it to the department of social and rehabilitation services.

The next group that the defense alleges is similarly situated is the plaintiffs in the ***Aid for Women v. Foulston*** lawsuit. This group comprises thirteen individuals who are licensed professionals, including physicians, nurses, social workers, a psychologist, and a sexuality educator, who provide confidential health care and counseling services to adolescents in the State of Kansas. There are several major differences that distinguishes this group from Dr. Tiller.

The mandatory reporting statute is actually a very difficult law to enforce. A prosecutor not only has to prove that the defendant is a member of the mandatory reporters and that they have reason to believe that a child has been sexually abused. The prosecutor would have to also prove that the mandatory reporter was aware that the child had been injured by the abuse. This additional requirement applies not only to sexual abuse, but also physical, mental and emotional abuse or neglect. How is a prosecutor going to obtain the information that an individual nurse, psychologist or physician has counseled with a child that has been sexually abused and also has the added factor of having been injured by the abuse?

In the instance of an abortion provider, any child that has received services by definition is pregnant. In the instance of a late term pregnancy, the abortion provider has obviously reached the conclusion that the procedure is medically necessary for the health of the mother. That would certainly be stronger evidence of injury than can be inferred merely by visiting a nurse or

physician. Even in the event of an early term pregnancy, the fact that the minor is obtaining an abortion shows that it is an unwanted pregnancy.

Furthermore, the abortion provider is required to file a report of the abortion service to KDHE. A child visiting a nurse or psychologist would not otherwise be documented in a manner that the prosecutor could readily discover. In order to investigate potential non-reporters, the prosecutor needs to have access to records showing that an abused child has visited one of the mandatory reporters so that it can be compared to the SRS records.

The defendant also complains that the mandatory reporters that attended live births were not initially investigated. Only late in the investigation did Kline begin to gather information. This, the defense alleges, was an effort to cover their motives of investigating only abortion providers. At least in the case of live births there is a record that the child abuse victim visited the mandatory reporter. However, in this case there is weak, if any evidence that the child was injured by the abuse. In this case, an inference could be made that the pregnancy was not unwanted since the mother chose to give birth rather than seeking an abortion. The argument would have to be made that the pregnancy itself was the injury, which would be a much weaker argument for a prosecutor than an unwanted pregnancy.

While there can certainly be suspicion that Kline's opposition to abortions was a motivating factor in investigating Dr. Tiller and Planned Parenthood as possible violators of the mandatory reporting law, it does not rise to the level of clear and convincing evidence. Looking at the decision objectively, a prosecutor

could easily make the same choice for the target of his investigation on account of the relative ease in establishing the elements of the crime. A prosecutor would have a legitimate objective in first enforcing the law against the violators that were the "low hanging fruit". It would be much easier to prove a case against a mandatory reporter that is known to have provided a service to children that have been sexually abused and suffered an injury through an unwanted pregnancy.

FLAWED INQUISITION PROCESS

The defense maintains that the inquisition which Kline used to obtain the records from SRS, KDHE and the defendant was a deeply flawed process and requires the suppression of the evidence obtained thereby. They cite cases involving general search and seizure issues. There are Kansas cases in which suppression has been sought and discussed in the inquisition setting. ***Matter of T.H.,*** 23 Kan.App.2d 471 (1997); ***State v. Schultz,*** 252 Kan. 819 (1993); ***State v. Cathey,*** 241 Kan. 715 (1987); ***State v. Martin,*** 233 Kan. 148 (1983); ***State ex rel. Londerholm v. American Oil Co.,*** 202 Kan. 185 (1968).

BIASED INQUISITION JUDGE

The defense alleges that the judge that presided over the inquisition in Shawnee County exhibited bias toward Kline's office or at the least the appearance of bias and was treated by the Attorney General's office as simply another member of Kline's investigation team. In support of that allegation they point to internal memos from the AG's office which discusses that they anticipate

that Judge Anderson will be cooperative in issuing the subpoenas that they request. The memos similarly criticize some federal judges as being hostile. It is certainly not unusual for attorneys to speculate about the propensities of certain judges and develop preferences of those that they appear before. But this does not reflect upon the bias of the judge, but rather the customs and habits of each individual judge.

The defense also points out that during the inquisition process that it appeared that Judge Anderson and Kline's staff worked closely together and became an unhealthy alliance. It needs to be remembered that this inquisition process lasted for a number of months. It is unlike a search warrant when an individual judge is approached with an application for review. The whole process takes a matter of minutes and the transaction is completed. Many inquisitions also take only a minimal involvement between the judge and the prosecutors. But the nature of this inquisition was much different. It was an ongoing process to develop information from state agency records and ultimately the defendant through step-by-step procedure. Several witnesses testified that Judge Anderson took an active role in asking questions and demanding information of the AG staff before complying with their requests. He also had times of obvious disagreement with Kline, especially over the return of the files from Johnson County.

The evidence fails to show a bias with Judge Anderson. Stephen Maxwell testified that Judge Anderson was the judge that the AG's office always used for inquisitions since he was the Chief Judge. The very nature of an inquisition is that it is an ex parte proceeding. While the defendant may be dissatisfied with

many of his rulings, Judge Anderson did not exhibit a bias that would disqualify him from presiding over the inquisition.

INQUISITION BASED UPON FALSE INFORMATION

The defendant next alleges that the inquisition was opened with false information and omissions of fact. To support this they point to the error in the statistical information that was used to open the inquisition and obtain subpoenas for the SRS records. The problem with this argument is that the discrepancy was not discovered until after the inquisition had been opened and the subpoenas issued. The AG's office did inform Judge Anderson later when they approached him to obtain records from KDHE.

The inquisition statute is silent about the sufficiency of the evidence that is required for the issuance of subpoenas. This was clarified in ***Alpha Medical Clinic v. Anderson,*** 280 Kan. 903 (2006). The Kansas Supreme Court ruled that the reviewing court only had to find a reasonable suspicion rather than probable cause that evidence of alleged violations would be found. Under this standard, Judge Anderson would certainly have reason to make that finding from the affidavit filed in support. Defendant also complains of omissions from the affidavits. None of these alleged omissions would have been sufficient to have altered the findings of Judge Anderson.

In the instance of the defendant's patient records, Judge Anderson made a probable cause finding and issued a search warrant. That warrant was never executed by the AG's office and a subpoena was issued instead.

The defense submits that the investigation improperly used the example of a ten-year-old child from out of state who had obtained a late term abortion to ask Judge Anderson for a subpoena of records. They allege that this was a misrepresentation since it was known that the out of state authorities had investigated this abuse case and a perpetrator had been prosecuted. But they miss the point on this. The Kansas mandatory reporting law does not exempt the licensed professionals from making a report even when it is known that law enforcement has investigated the case. Logic may dictate that the objective of the mandatory report statute has been met, but it still requires reporting. It was important to the investigators to use this case since it was one case that the identity of the child was known and could be used to verify whether the defendant had made a report.

The inquisition in this investigation was a very complicated process. Most inquisitions are fairly routine and have only one set of subpoenas sought to be issued for investigative purposes. This inquisition was another matter. It has even been reviewed by the Kansas Supreme Court on two occasions. Any irregularities found in the proceeding certainly do not justify the sanction of suppressing the evidence obtained thereby.

OUTRAGEOUS GOVERNMENTAL CONDUCT

The defendant raises a second argument for the dismissal of the charges in this case. The defense alleges that Phill Kline and his administration engaged in conduct during their investigation that was so outrageous that it justifies the use of

the court's sanction in dismissing the charges. They are also maintaining that the subsequent administration of Paul Morrison, who made the charging decision to file this case engaged in improper conduct of his own. If their conduct standing alone is not sufficient to impose this rare sanction, then the defense argues that the cumulative effect of their actions justify dismissal.

Appellate courts have recognized under very limited circumstances that government agents can become involved in circumstances of an investigation in which their conduct is so egregious that it becomes a due process violation. The courts have found this to be a rare sanction and describe the standards that must be met to find such violation. In ***United States v. Williams,*** 547 F.3d 1187, 1199 (9th Cir. 2008) the court stated:

> "Outrageous government conduct is not a defense, but rather a claim that government conduct in securing an indictment was so shocking to due process values that the indictment must be dismissed. *United States v. Holler, 411 F3d 1061, 1065 (9th Cir. 2005) (quoting United States v. Montoya, 45 F.3d 1286, 1300 (9th Cir. 1995)).* This claim requires meeting a 'high standard,' *id. at 1066,* with a showing that 'the government's conduct violates fundamental fairness and is 'shocking to the universal sense of justice mandated by the Due Process Clause of the Fifth Amendment.' *United States v. Gurolla, 333 F.3d 944, 950 (9th Cir. 2003) (quoting Russell, 411 U.S. at 431-32, 93 S.Ct. 1637)."*

The United States Supreme Court noted the rarity of exercising the ultimate sanction of dismissal of a case in ***U.S. v. Russell,*** 411 U.S. 423, 431-432 (1973) where it stated "while we may some day be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction…the instant case is distinctly not of that breed."

It is with this high standard in mind that this court must review the alleged misconduct to determine first, if it does constitute misconduct, and if so whether it rises to the level to justify the sanction requested.

MISREPRESENTATIONS OR OMISSIONS TO SRS

The defendant complains that when Investigator Williams requested records from SRS, he failed to tell them the real reason that he wanted them. This was probably more of an omission than a false statement. He just failed to give them a detailed explanation. During an investigation a law enforcement officer is allowed to make false statements to a suspect as an interrogation technique. ***State v. Ackward,*** 281 Kan. 2 (2006). It would certainly not be necessary for an investigator to give detailed explanation to a state agency as to the direction of his investigation in order to request access to records. Revealing the object of the inquiry could jeopardize the investigation.

RELIANCE UPON KNOWN LAW-BREAKERS

The defense alleges that the Attorney General's office relied upon known law-breakers to assist in the investigation. The comparison apparently refers to the use of anti-abortion activists as a resource for information. It is not unusual for law enforcement to seek out information from a person or persons that have opposing points of view from the subject of an investigation. The effort to find a clinic employee that would possibly be cooperative is also not an unusual

investigative tactic. Many times informants are of great assistance to law enforcement.

It is noteworthy that the Kline administration employed staff that had strong anti-abortion views. It is not that such is improper, but demonstrates the high priority of this issue upon the Attorney General. It makes inference upon his mindset in this investigation.

THE PURSUIT OF ADULT PATIENT IDENTITIES

Kline was aware that the identity of adult patients was a major concern of the Kansas Supreme Court as well as the defendant. That was the primary concern addressed in the ***Alpha*** decision. The defense alleges that Kline persisted in his attempt to identify adult patients in spite of this. He points to the subpoena of the La Quinta Inn records. The investigators attempted to match the KDHE records with the records from the motel. This motel was known to offer a discount for traveling patients that were pursuing medical procedures.

Jared Reed testified that his assignment was to obtain the identity of the adult traveling companions of the minor patients. That was done in an effort to identify the patients under the age of 16 that had obtained abortions to see if the defendant had filed the SRS report.

HANDLING OF PATIENT RECORDS

The defendant points to the manner in which the patient records were handled by Kline and his investigators as evidence of outrageous government

conduct. In the waning days and hours of his administration, Kline made arrangement for the transfer of files to the Johnson County District Attorney's office. Since Kline had been selected to replace Morrison as the Johnson County District Attorney, he wanted to retain the records for continued investigation.

The records were stored at times in the automobile and residence of the former staff of Kline's AG office who were then hired onto the Johnson County District Attorney's staff. This was justified by claiming that there was insufficient security for the files in the DA's office. This and other issues involving the patient records was the subject matter of the Kansas Supreme Court opinion in the ***CHHP v. Kline*** opinion. The supreme court was very critical of Kline in that opinion, but found that he had broken no law. The manner in which the files were handled upon his departure were quite questionable, but not illegal.

There is a very important aspect of this issue that has been raised by the prosecution. Many of the items of behavior that have been raised as objectionable by the defense occurred after Kline had left the Attorney General's office. That includes the recent allegations of whether Kline attempted to take patient information with him upon departure from the Johnson County District Attorney's office. Even if true, this had no impact upon the investigation in this case. Once the investigation was assumed by Attorney General Paul Morrison, the acts of Phill Kline could not have tainted the investigation and prosecution of this case.

KANSAS SUPREME COURT CONTEMPT PROCEEDING

The Kansas Supreme Court has now had the opportunity to review the behavior of Phill Kline and his Attorney General's office in relation to the

investigation of this case in both ***Alpha Medical Clinic v. Anderson*** and ***CHHP v. Kline***. Each of these opinions has been very critical of aspects of his handling of this investigation. This includes the attachment of sealed records to a brief that he knew would be unsealed and the subsequent press conference discussing the same. There is also considerable criticism of other aspects of the way patient information was handled. Comments were made in the ***CHHP*** case that there were questions about compliance with the Kansas Rules of Professional conduct. But in both instances the Kansas Supreme Court found insufficient cause to make contempt findings.

PAUL MORRISON'S CHARGING DECISION

The Defense alleges that the investigation was further tainted by the manner in which Paul Morrison completed his review of the investigation records and made the charging decision in this case. Evidence was provided that Morrison had engaged in an illicit affair with Linda Carter while he was in the Johnson County District Attorney's office. She was the Director of Administration over the staff in his office. This affair continued after Morrison left the Johnson County District Attorney's office while he as the Attorney General. A great deal of evidence was provided that this relationship was very stormy and was a continuous cycle of break-up and make-up.

The defendant alleges that the final charging decision of Paul Morrison was affected by this relationship. Ms. Carter continued to work for Phill Kline's administration in the Johnson County District Attorney's office. She became familiar with aspects of the abortion investigation and formed the opinion that Dr.

Tiller should be charged. She testified that on one occasion she asked Morrison when he was "going to do the right thing", referring to filing charges against this defendant. She said that Morrison reacted by storming out of the apartment leading to yet another break-up of the relationship.

If Paul Morrison's decision to file this present case against the defendant was in fact the result of an effort to pacify his paramour, instead of the merits of the investigation it would indeed qualify as outrageous governmental conduct. But the evidence to support this conclusion is greatly lacking. Ms. Carter testified that this was the only time the issue was discussed. Additionally it is quite unlikely that he would file a case that resulted from a major investigation of his predecessor unless he believed that the evidence supported the charges. The campaign for Attorney General between Kline and Morrison was very heated and much of it was highlighted by their opposing views on abortion. The defendant has failed to provide evidence that will support his supposition.

CUMULATIVE EFFECT OF ALLEGED MISCONDUCT

The Defense maintains that even if the items taken alone are not sufficient to satisfy the court that outrageous governmental conduct occurred, then the cumulative effect would reach that conclusion. The case law dictates that dismissal for outrageous governmental conduct requires the claim to meet a very high standard. The conduct must violate fundamental fairness and be shocking to the universal sense of justice demanded by due process.

There is no doubt that Phill Kline's campaign for and conduct of the Attorney General's office was heavily involved in abortion issues. It is not uncommon for elected prosecutors to pledge intensive efforts to address areas of perceived criminal violations. Some of these may tread very closely to constitutionally protected conduct such as cracking down on pornography and the freedom speech or concentrating on street gang activities and freedom of association. The problem arises when the prosecutor steps over the line and threatens the constitutionally protected activity.

While Phill Kline testified that he would like for all abortions to be outlawed, his investigations made no attempts to prevent lawful abortions from being performed in the State of Kansas. His procedures have certainly been questioned by the Kansas Supreme Court, but his conduct in the investigation does not merit the sanction of the dismissal of the charges or suppression of evidence.

The motion to dismiss or suppress is therefore denied.

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Clark V. Owens II
District Judge