

**IN THE TENTH JUDICIAL DISTRICT
DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CRIMINAL DEPARTMENT**

STATE OF KANSAS.

Plaintiff.

vs.

Case No. 03CR1563
Court No. 5

CONRAD J. BRAUN,

Defendant.

MOTION FOR NEW TRIAL

COMES NOW the Defendant, by and through his attorney, Bob L. Thomas, and hereby moves this Court, pursuant to K.S.A. 22-3501, for a new trial.

In support of said motion, Defendant alleges and states as follows:

EVIDENCE OF PRIOR UNCHARGED CRIMINAL CONDUCT

1. The Defendant is entitled to a new trial due to the victim/witness interjecting testimony into the trial that was clearly inadmissible pursuant to K.S.A. 60-455. Prior to the jury trial beginning in this matter, the Court held a hearing on the Defendant's Motion in Limine. The subject of the Motion in Limine was exhibits that the State intended to introduce during trial that included references to the Defendant's prior convictions, prior incarcerations, and commitment to a state mental institution. The Court granted the Defendant's motion in part and ordered that portions of the State's exhibits be redacted. In addition, the Court warned the State to be careful with their witnesses due to the potential of inadmissible evidence poisoning the proceedings.

2. Prior to the beginning of jury selection, the State turned over to defense counsel what

is attached as Exhibit A, which is a letter allegedly sent from the Defendant to the victim in September of 2000. The letter arguably contains a threat of violence from the Defendant to the victim. The State said they had only received Exhibit A from the victim shortly before trial.

Defense counsel informed the State that defense counsel wished to take up the admissibility of the letter, and the State said that it did not intend on offering the letter as an exhibit at trial.

Based on this assurance by the State, and the Court's ruling on the Motion in Limine, Defendant did not believe it necessary to bring the issue of the September 2000 letter before the Court. On page 4, in paragraph 3 of Exhibit A, the writer threatens to castrate the victim.

3. During direct examination, the victim gave a non-responsive answer to a question by the State indicating that the Defendant had previously threatened to castrate him (the victim).

This was a clear reference to the September 2000 letter, which the State had agreed not to seek to admit. Defendant moved for a mistrial. At the sidebar, the State responded that it had told the victim that the Defendant's prior convictions were inadmissible, but that his comment, although not intentionally elicited, fell outside of the warning the State had given the victim/witness. The Defendant argued that under the circumstances of the case, not warning the victim to refrain from mentioning prior threats of violence issued by the Defendant was beyond mere recklessness.

4. This testimony was highly prejudicial to the Defendant. Until that point, there had been no evidence presented to the jury to indicate that the Defendant was a violent person. The Defendant's theory of defense was that the Defendant was attempting to resolve a civil dispute and that his letters (the State's trial exhibits) were offers to settle this civil dispute. Obviously, the castration testimony completely negated the position that this was simply a civil matter. The testimony was evidence of prior uncharged criminal conduct, and prohibited by K.S.A. 60-455.

The Kansas Supreme Court has held that:

Whether there is an order in limine or not, a prosecutor has the duty to guard against statements by his or her witnesses containing inadmissible evidence. If the prosecutor believes a witness may give an inadmissible answer during his or her examination, the prosecutor must warn the witness to refrain from making such a statement.

State v. Crume, 271 Kan. 87, 101 (2001). Based on the Court's warning regarding the introduction of such testimony and the State's knowledge that this castration threat was an issue that the victim believed to have relevance, the State was under a duty to warn the victim/witness to not bring the issue up in his testimony.

**THE COURT ERRED IN REFUSING THE
DEFENDANT'S PROPOSED INSTRUCTION**

5. The District Court erred in refusing to instruct the jury on the law applicable to the case at bar. The Defendant's theory of defense was that the matter was civil in nature and not criminal. The Defendant offered proposed jury instructions on the issue of civil defamation. The Court refused to give the proposed jury instruction.

6. The State offered into evidence letters written by the Defendant wherein the Defendant referenced the civil causes of action he believed he had against the victim. In addition, the State offered into evidence a proposed contract that the Defendant sent to the victim wherein the Defendant offered to settle his perceived civil causes of action. This evidence can be viewed as supporting the Defendant's theory of defense.

7. In addition, the Defendant's letters, which were admitted into evidence, referenced his belief that his actions were simply an exercise of his constitutional right to free speech. Based on the fact that this evidence was placed before the jury, the Defendant requested a jury instruction based on §11 of the Bill of Rights of the Constitution of the State of Kansas. Liberty of Press and Speech; Libel. The Court declined to give this instruction.

8. The Defendant requested that the jury be instructed on the elements of K.S.A. 21-3428, consistent with the clear language of the statute. The Defendant contends that the clear language of the statute requires that the State prove that the Defendant compelled another to act against such person's will. See KAN. STAT. ANN. § 21-3428 (1995). The Court declined to give the Defendant's proposed instruction and instructed the jury that a person can be guilty of blackmail by attempting to compel someone to act against their will.

9. The instructions requested were correct statements of the law, and a court "has a duty to instruct the jury on the law applicable to the theories of the State and the defendant where there is competent supporting evidence." State v. Caldwell, 21 Kan. App. 2d 466, 474 (1995) (citing State v. Hickey, 12 Kan. App. 2d 781 (1988)).

LIMITING DEFENSE COUNSEL'S CLOSING ARGUMENT

10. The District Court erred when it instructed defense counsel to not argue the issue of the Defendant's intent during closing argument. During defense counsel's closing argument the State objected and complained that if defense counsel continued to argue that the Defendant did not have criminal intent, then the State should be entitled an ignorance of the law instruction. The Court had previously ruled that the Court would not give an ignorance of the law instruction. Based on the State's repeated complaints about defense counsel arguing the Defendant's intent, the Court ordered defense counsel to not argue the Defendant's intent anymore.

EVIDENCE OF THE DEFENDANT'S PRIOR MENTAL COMMITMENT

11. The District Court erred in allowing the State to admit evidence of the Defendant's prior involuntary commitment into a mental health institution. State's trial exhibit 3A contained a reference to the Defendant being "sent to Larned Correctional Facility, declared administratively 'insane' under instruction of the Kansas Attorney General's Office..."

administratively 'insane' under instruction of the Kansas Attorney General's Office..."

12. The language Defendant hereby complains of was encompassed in the Defendant's Motion in Limine, which was granted in part and denied in part. Again, the Defendant's theory of defense was that the case involved a civil dispute, not a criminal action. The evidence of the Defendant being declared insane clearly paints a picture of the Defendant being a dangerous person, and not someone attempting to resolve a civil matter. While few things are actually "clear" in a criminal case that makes it all the way to a jury trial, it is in fact clear that evidence that a Defendant was previously committed to a mental institution has no probative value in a criminal blackmail prosecution. This evidence was placed before the jury over defense counsel's objection at trial, and despite defense counsel's Motion in Limine.

NUEFELD ISSUE

13. The District Court erred in not granting Defendant's motion for a judgment of acquittal at the close of the State's case. In State v. Nuefeld, 260 Kan. 930 (1996) the Kansas Supreme Court almost perfectly framed the issue of how to interpret the second prong of the Kansas blackmail statute, K.S.A. 21-3428. Unfortunately, the Nuefeld case was decided on other grounds and the Supreme Court did not address the issue that this Court is now squarely faced with.

14. Defendant argues that under the clear language of K.S.A. 21-3428, a person has not committed the crime of blackmail if that person has only attempt to compel another person to act against his or her will. The State offered no evidence that the Defendant had actually compelled the victim to act against his will. In fact, the evidence was clear that the victim had not taken the actions that the Defendant wanted him to, nor did the victim ever intend on responding to the Defendant's perceived threats. The State offered no evidence that the Defendant's actions met

the element of compelling another to act against his will, as required by K.S.A. 21-3428.

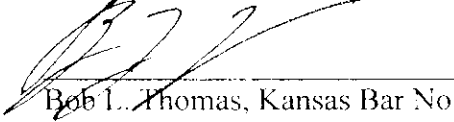
Therefore, the Defendant's Motion for Acquittal should have been granted at the close of the State's evidence.

15. Any reasonable doubt as to the meaning of a criminal statute is to be decided in the favor of the citizen being subjected to that criminal statute. State v. Vega-Fuentes, 264 Kan. 10 (1998). The discussion of the second prong of the blackmail statute that our Supreme Court undertook in Nucfeld supports the position that there is a reasonable doubt as to the interpretation of K.S.A. 21-3428.

WHEREFORE the Defendant respectfully asks this Court to grant the Defendant a new trial.

Respectfully submitted,

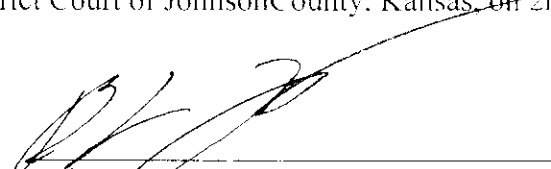
THOMAS & ASSOCIATES, LLC



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Attorneys for Defendant

NOTICE OF HEARING

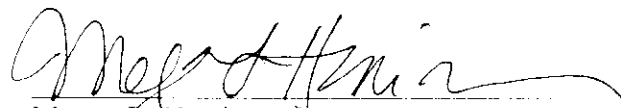
Take notice that the above motion will be called up for hearing before the Honorable Stephen Tatum, Division No. 5 of the District Court of Johnson County, Kansas, on 2nd day of August, 2005, at 11:00 a.m. of said day.



Bob L. Thomas, Kansas Bar No. 19789
Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that on this 24 of June, 2005 a copy of the above and foregoing was hand delivered to Assistant District Attorney, Sara Welch, Johnson County District Attorney's Office, Johnson County Courthouse P.O. Box 728, Olathe, KS 66061.



Megan L. Harrington

Exhibit A

9/8/00

Tucker Kirk—

On three (3) separate occasions prison gang members who respect me have offered to reach out and touch you for interfering with letters to my sons sent from prison.

On three (3) separate occasions I spared your life or limb. This was before I learned that you sexually molested Aaron.

This is to notify you that effectively immediately you are to have no deliberate contact with Aaron, Jesse, or Adam Braun, their wives, or their children — forever.

I did not learn that Aaron was sexually traumatized by you as a minor child until June 15, 2000, when he cried as a small child in his father's arms. I will not tolerate your presence within the Braun family so long as I am physically able to prevent it. This is personal between you and me, and I hold you entirely responsible.

Since I knew Adam would be leaving his mother and your perverted influence on August 19th to attend KU, I have patiently bided my time with this public notice.

Last June when Jesse learned of your sexual abuse he was visibly shaken for being in the same car with you to attend Russ & Bernice's 50th Anniversary. He, too, was in tears over the telephone and repeated he only wanted to honor his grandparents. Again, all I could do was comfort my son, not blame him, and assure him to be patient and that I would take care of it.

When Jesse came to visit me in August he related to me how apparently you & Donna came to San Diego to see Andrew last February for his 1st birthday. At the time Jesse did not understand what was going on (neither Aaron or Sioben have told me about it), but apparently Donna indicated to Aaron she was coming alone and showed up with you. Aaron was extremely agitated, would not visit either of you and allowed Donna and you only

one hour with Sioban & Andrew.

I know how Donna operates. She has no shame, values the superficial, and expects to be accepted by God, her parents, and her children regardless of her actions. But your lifestyle is not acceptable in the Brown family, your presence will not be tolerated and I hold you solely responsible so that it will not happen again - ever.

As for Donna, she is free to visit her family as I would never do what was done to me by you, Donna, and your gang of public officials. But just as Jesus Christ our Lord requires genuine repentance and subjection before He will enter into a relationship with His Bride, so I will have no contact with Donna until there is genuine repentance and submission to her first husband. If she is in subjection to Jesus Christ she will find His burden light and His yoke easy,

Just so you have no misunderstanding, if Donna is on her deathbed and her sons come to visit, you must leave! If a BROWN family member knocks on

your door and is invited in, you must leave. If a Braun family member is at Russ + Bernice's home, you can't be there! A Braun family member can contact you, but you can't contact them. If you have a problem with this concept, just ask Donna or a Kansas judge how it works.

Please note I am sending a copy of this notice to Kansas judges, my federal judge, and my probation officer so that it becomes public record.

If you have inadvertent contact with a Braun family member please notify me through Kansas and federal judges so that I do not inadvertently castrate and hang your pecker and nutsock on the Braun family mantel. If you have deliberate contact with a Braun family member I will personally perform this surgery on you without the benefit of anesthesia or a consent form and then promptly turn myself into the authorities for a jury trial by my peers. I have a deep love for this Nation and our Constitution. I hate gangs whether they are prison gangs or a cabal of

state and federal officials working unlawfully in joint and concerted action with private individuals. Your own gang related activities against my family will be addressed later in federal court.

If state or federal authorities elect to prosecute me under some nebulous statute for this notice, the notice still stands. I fear no man, but God alone. You will be left in peace so long as you have no deliberate contact with my family.

Without Pretense,

cc; Judge Dean Whipple

Judge Lawrence Sheppard

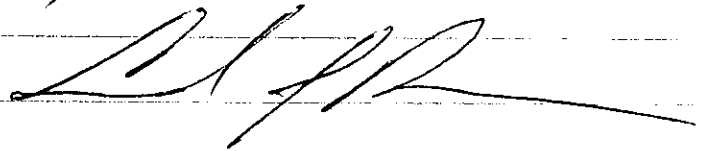
Judge Anderson

Jesse Braun

Russell Heins

Ron Helwig

Linda Copeland, Andrew Lorenzen (US Production)



P.S. BEWARE! It would not be uncharacteristic for Donna to seduce you into deliberate contact with a Braun family member and report it to the U.S. Attorney's Office so that you lose your nuts and I get blown away by the FBI! Again, I hold you solely responsible.