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November 12, 2026

REPORT: FINDINGS REGARDING VEHICLE FATALITIES AND INJURIES AT THE STRYKER SOCCER FIELD, IN WICHITA, KANSAS ON OCTOBER 17, 2026

On Saturday October 17, 2026, a Chevrolet truck drove onto a soccer field at the Stryker Sports Complex located at 2999 N. Greenwich Rd. in Wichita, Sedgwick County, Kansas. At the time of the incident, the truck was occupied by a female driver and two of her three children, ages 14 and 11.

I. Facts

The following facts constitute a summary of the larger investigation conducted by the Wichita Police Department.

The investigation revealed that the driver of the Chevrolet truck left Garden City, Kansas, (219 miles West of Wichita, Kansas) at approximately 7:00 a.m., the morning of Saturday, October 17, 2026, driving her husband's 2021 Chevrolet 1500 Silverado, Trail Boss truck to attend soccer games for her two younger children (both 11 years old) at the Stryker Sports Complex in Wichita, Kansas. The driver's 14-year-old daughter sat in the front passenger seat. The driver told detectives that she drove her husband's truck instead of her normal vehicle because she was concerned the tires of her vehicle had been losing air recently and that it might not be safe to travel to Wichita.

After arriving at Stryker around 10:40 a.m., the two younger children each had games with their respective teams. At the completion of the two games, the driver and her 3 children left the Stryker complex and traveled to two fast food restaurants and then a commercial business in the area before returning to Stryker at approximately 2:30 p.m. for the next game. Video surveillance in and around these businesses showed the truck being operated safely and, when outside of the vehicle, the driver was seen walking and behaving normally.

Video surveillance recorded the truck re-entering the Stryker complex. The driver stopped appropriately for foot traffic and drove at reasonable speeds. The truck was seen circling the parking lot looking for a place to park. After several minutes, she found an open parking stall directly in front of field #4 which was divided into 4A (north field) and 4B (south field). The truck came to a stop in the parking stall at 2:36 p.m. The stall in which she parked was the only stall in the parking lot with an unobstructed path to the field. A fence stood between the field and the remaining, west-facing parking stalls.

The parking lot is asphalt with an approximately 7-inch concrete curb surrounding the lot. The parking stall into which the driver parked has that same curb. The front tires of the truck appeared to rest directly against that curb when it came to a rest at 2:36 p.m. Video surveillance from the parking lot revealed that approximately 46 minutes passed with truck in that stationary position. The driver later told detectives that when she came to stop in the parking stall, she believed she placed the truck into park utilizing the column shift.

Approximately 1 minute later after coming to a stop in the parking stall, the driver's male child was seen on video surveillance exiting the truck from the rear passenger door. The child was later interviewed and said the back door was still locked when he went to exit the truck. The Chevrolet truck is equipped with an automatic door lock when in drive. While there may be

other explanations, that the door remained locked is consistent with the vehicle having remained in drive after coming to a stop in the parking stall. The 14-year-old front-seat passenger was later seen exiting the truck and walking to the port-a-potty just west of the truck. She told detectives she thought she had to unlock the truck again to get out because she thought her mother had locked it again after the younger brother left.

As previously noted, the driver told detectives that after stopping the truck in the parking stall, she believed she placed the truck into park: "I parked the truck. I mean I, I think I parked the truck." She realized she had time before her son's next game and told her kids she was going to take a nap. She reclined the driver's chair-back and went to sleep. Later inspection of the truck showed the back support (chair back) of the chair was in the reclined position, while the cushion (seat) portion of the chair had not been pushed/adjusted back.

The driver's daughter believed people walking by the truck were looking into the truck at her mother sleeping, so she (the daughter) placed the two-panel sunscreen in the windshield of the truck, which covered the entire windshield. The younger daughter fell asleep in the back seat.

At 3:22 p.m., on video collected from Styker, the truck suddenly began moving west over the curb and directly up the concrete entry path to the soccer field. There is no obvious action or movement visible in or around the truck in the seconds before this movement. A video recording of the game taking place on field 4A shows the two sunscreens were in place covering the windshield prior to the truck going into motion and remained in place as the truck moved onto the field.

The truck drove west into an area where spectators were sitting between field 4A and 4B, striking multiple people sitting on the "sideline" between the two fields. The truck made a slight curve to the southwest into 4B as it traveled west before coming to an abrupt stop.

Some civilian witnesses reported hearing the truck's engine "rev" while others did not. Estimates of speed varied significantly. Witnesses did report seeing the sunshades in the windshield as the truck crossed the field. A statement made by one witness to responding officers was emblematic of the witness statements: "everything [was] a blur."

The driver, whose chair was still fully reclined, told detectives she awoke to her daughters' screams, the feeling of the truck moving, and the sounds of people screaming outside the truck. She told detectives she was disoriented and tried and failed to depress the brake. She remembered reaching for the sunscreen but failed to remove it, before finally forcing the column shift into park, which brought the truck to an abrupt halt. She did not think she successfully depressed the brake at any point.

Witnesses ran to the truck once it stopped. One man pulled the female driver from the truck. Witnesses described the driver as saying "I'm sorry, I'm sorry" apologizing repeatedly. Another told detectives that she said, "I was asleep, I was asleep" and "I should have never come" while "crying hysterically." Other witnesses described the driver as not looking awake, "sleepy" and "unsure," and appeared to have just woken as she exited the truck.

A male civilian reached into the cab of the truck to place the truck into park but could not locate the gear shift. He did note the feet of the female in the driver's chair were still on the brake pedal. He described putting his own hand on the brake and then turning the truck off by pressing the on/off button on the dash. None of the witnesses who responded to the truck and had contact with the driver smelled the odor of alcohol.

An off-duty police officer from another jurisdiction ran to the truck and contacted the female driver. He described the driver as frantic and crying. The driver told him she had been sleeping and that she could not see because one of her kids put the sunscreen up in the

windshield. He asked her for her driver's license and then gave it to responding officers. He reached into the truck and found the driver's cell phone, which was on the dash on the driver's side. He gave it to the driver and she called her husband. The off-duty officer recorded that call with his own phone and turned that recording over to detectives.

The driver's husband drove to Wichita after being called by his wife. He spoke to detectives and told them that when she called, she told him she had fallen asleep, it was an accident, her foot was on the gas and she had run over people. He described her as frantic. He knew of no issues with his wife and said the truck drove properly the last time he drove it.

A responding police officer from the Wichita Police Department spoke initially to the driver's two daughters who had been occupants of the truck when it traveled across the soccer field. They told the officer they thought something woke their mother which caused her to strike the accelerator. When they got the sunshields down, they found themselves on the soccer field.

The driver was fully cooperative with law enforcement. She signed waivers to collect her blood, to search her phone and truck, to allow a mechanical examination of the truck and she agreed to speak to detectives. The driver has remained cooperative throughout the investigation.

The driver's blood was submitted to the Sedgwick County Regional Forensic Science Center for testing. The toxicology examination of the driver's blood was completed by the Sedgwick County Regional Forensic Science Center. The report concluded there was no presence of any impairing substances in her blood. Her blood was specifically examined for the presence of the following substances: ethanol, Amitriptyline, Amphetamine, Barbiturates, Benzoylecgonine, Bupropion, Carboxy-THC, Carisoprodol, Chlorcyclizine, Chlordiazepoxide, Chlorpheniramine, Chlorpromazine, Clomipramine, Codeine, Cyclobenzaprine, Dextro/Levomethorphan, Diazepam, Diphenhydramine, Doxylamine, Es/Citalopram, Fentanyl,

Fluoxetine, Hydrocodone, Hydromorphone, Imipramine, Ketamine, Lamotrigine, Lidocaine, Meprobamate, Methadone, Methamphetamine, Methylenedioxymethamphetamine [MDMA], Midazolam, Mirtazapine, Mitragynine, Morphine, Nordiazepam, Norketamine, Norlidocaine (MEGX), Nortriptyline, Oxazepam, Oxycodone, Phencyclidine, Pheniramine, Sertraline, Temazepam, Tramadol, Trimipramine, Venlafaxine, and Zolpidem. None of these substances were found.

The truck was factory-equipped with an Event Data Recorder (EDR). This device is capable of recording certain technical data just before, during and immediately after a collision—though airbag deployment is typically required to trigger the recording. The airbags in the Chevrolet pickup did not deploy in this situation. The EDR was downloaded by a detective trained in the process necessary to download the EDR. The information gathered in the download was examined. No information related to this incident was recorded due to the lack of airbag deployment.

The Chevrolet truck also contained what is commonly referred to as an "infotainment center." The download of this device was conducted by a detective with the Wichita Police Department trained in the process necessary to download the infotainment center. There was nothing recorded by the infotainment center related to this incident, including the answers to the following specific questions:

a. Whether the car was definitively placed in park or remained in drive when it came to a stop in the parking stall prior to the incident.

b. The degree of pressure placed on the accelerator prior to the truck leaving the parking stall.

c. When the brakes or gas were activated after the truck moved forward from the parking stall.

On October 19, 2026, autopsies were conducted on Nicholas Schafer, (35 yr old WM) and Cole Adrian (6 yr old WM) at the Sedgwick County Regional Forensic Science Center. The provisional Anatomical Diagnosis issued by the coroner, Dr. Harley Schainost, M.D., was that both Mr. Schafer and Cole Adrian died as the result of blunt trauma, which is consistent with having been struck by a moving vehicle.

On October 28, 2026, an engineer and technician from General Motors traveled to Wichita, Kansas to examine the 2021 Chevrolet 1500 Silverado, Trail Boss. The examination occurred at the property and evidence building maintained by the Wichita Police Department. They examined the truck including the propulsion, transmission and brake systems. No signs of a mechanical malfunction or system failure were uncovered. They also examined the downloaded information gathered from the EDR and the infotainment center by the WPD and confirmed that all the information capable of having been downloaded appeared in the respective downloads.

Investigators spoke to a Chevrolet dealership in Sedgwick County to inquire whether the 2021 Chevrolet 1500 Silverado, Trail Boss had any known defects or national recalls that could cause the truck to slip into gear/drive. No such defects or recalls were reported.

Investigators spoke to the coaches and referees of the games in which the driver's children had played that day as well as those involved in the games taking place on the fields impacted by the wreck. No one reported having any conflict or arguments with the driver or occupants of the Chevrolet truck.

Wichita Police obtained a Chevrolet truck from a local dealership of the same make, model and approximate mileage. That truck was taken back to the same parking stall at Stryker field. Detectives stopped the truck but left it in drive with the tires against the curb and the officer's foot off of the brake pedal. With no pressure applied to the brake, the truck remained motionless, in drive, against the curb. When the gas pedal was pressed, the truck jumped the curb and moved west toward the soccer fields.

II. **Factual Conclusions**

There are *six* possible explanations for the events that occurred at the Stryker Field Complex on October 17, 2026, each of which was evaluated considering the facts uncovered by the investigation.

The *first* possibility is that the driver suffered a medical emergency. There is no evidence to support such a conclusion. The driver did not complain about any medical issues, and she did not seek treatment for medical issues after the wreck. Detectives obtained her previous medical records from Garden City, Kansas and found no evidence of any medical issues in her medical history that could have contributed to these events.

The *second* possibility is that the driver operated the truck while under the influence of drugs or alcohol. The driver gave consent to draw her blood and that sample was then sent to the Sedgwick County Regional Forensic Science Center for analysis. The toxicology examination of the driver's blood concluded there was no presence of any impairing substances in her blood.

The *third* possibility to be considered is whether a mechanical malfunction occurred. No evidence to support this conclusion was uncovered by detectives.

a. There is no evidence uncovered by the download of the event data recorder (EDR) to suggest that a mechanical malfunction in the propulsion, transmission or braking systems of the Chevrolet truck contributed to this event.

b. There is no evidence uncovered by the download of the infotainment center to suggest that a mechanical malfunction contributed to this event.

c. There was no evidence relayed to law enforcement by the engineer or technician who examined the truck to suggest that a mechanical malfunction contributed to this event.

d. There were no known defects or recalls for the 2021 Chevrolet 1500 Silverado, Trail Boss that would cause the truck to slip into gear/drive.

The *fourth* possibility to be considered is whether the driver acted intentionally. There is no evidence to suggest this was an intentional act, and several facts support the conclusion this was not an intentional act, including but not limited to the following:

a. Despite bogus social media claims to the contrary, none of the witnesses interviewed by law enforcement report any confrontation or disagreement between the driver or occupants of the truck and any other pedestrians, coaches, players or referees before, during or after the wreck.

b. The sunscreen is visible in the windshield in video taken moments prior to the truck moving forward, and in a separate video showing the truck moving forward across the soccer field. This was also confirmed by eyewitnesses who reported the sunscreen covered the windshield as the truck crossed the soccer field.

c. The driver's chair remained in the reclined position when the truck came to a stop.

d. The diver's own male child was out of the truck and on one of the fields of play, obstructed by the sunscreen.

f. The driver was described by witnesses who ran to the driver's door when the truck came to a stop as "sleepy," "crying hysterically," and her first words were, "I was asleep," and "I'm sorry."

The *fifth* possibility to be considered is whether the driver or her daughter (the front seat passenger) accidentally shifted the column shift from park into drive prior to the truck moving forward onto the soccer fields. There is nothing in the evidence collected to confirm this occurred. Conversely, there is no dispositive evidence to establish this ***could not*** have occurred. While this remains a possible explanation that must be considered, the confluence of events that would have been necessary for this to have taken place makes this explanation less plausible.

a. If the truck has been placed into park when it initially came to a stop in the parking stall, the brake would have had to have been pressed before the column shift could be shifted from park back into drive.

b. If the brake had been pressed the moment the column shift was accidentally engaged, the shifter would first have to have been pulled forward before it would move down to from park, past reverse, neutral and into drive.

c. The act of moving the column shift from park into drive makes a noise as observed when detectives subsequently tested a similar truck. This noise would have had to have been missed by the driver and the other two occupants of the truck.

d. If the column shift was inadvertently moved down from park into drive, the final act required would have been for the driver to have then inadvertently removed her foot from the brake and extended her foot onto the gas pedal while she slept.

While this possibility cannot be ruled out – the combination of factors necessary for this to have occurred make this less plausible than the sixth and final possibility.

The *sixth* and final possibility considered is whether the driver failed to place the column shift into park when she came to a top in the parking stall, then went to sleep thinking she had. Of the six possible explanations, this requires only one additional step to trigger the wreck: the driver inadvertently extending her foot onto the gas pedal while she slept.

The likelihood of this sixth possibility being the most likely explanation was further supported by the test subsequently run by detectives with the Wichita Police Department who utilized a truck of the same make, model and approximate mileage. This test established that when that truck was placed in the same parking stall at Stryker field and left in drive—even with the operator's foot removed from the brake—the truck stayed in place until the accelerator was pressed.

III. Criminal Statutes

When one person causes the death of another (others), the following felony criminal statutes are considered:

1. *Capital Murder* – defined by K.S.A. 21-5402(1) as the ***intentional*** and premeditated murder of another under one of 7 defined situations, only one of which is relevant in this matter:

> K.S.A. 21-5401 "(6) intentional and premeditated killing of more than one person as a part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct."

2. *First Degree (Premeditated) Murder* - is defined by K.S.A. 21-5402(1) as the killing of another human being "***intentionally*** and with premeditation."

3. *First Degree (Felony) Murder* – defined by K.S.A. 21-5402(2) as the killing of a human being committed "in the commission of, attempt to commit, or flight from, any inherently dangerous felony."

The felony murder statute contains the list of "inherently dangerous" felonies that may be relied upon to sustain a felony murder charge. The list of inherently dangerous felonies includes §(S), the crime of "Aggravated Endangerment of a Child," which is defined by K.S.A. 21-5601(b)(1):

> (b) Aggravated endangering a child is:
>
> (1) Recklessly causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health is endangered;

4. *Second Degree (Intentional) Murder* – defined by K.S.A. 21-5403(1) as "the killing of a human being committed ***intentionally***."

5. *Second Degree (Reckless) Murder* - defined by K.S.A. 21-5403(a)(2), as the killing of a human being committed, "unintentionally but ***recklessly*** under circumstances manifesting extreme indifference to the value of human life."
6. Voluntary Manslaughter – defined by K.S.A 21-5404 as ***knowingly*** killing a human being, (1) upon a sudden quarrel or in the heat of passion.

7. *Involuntary (Reckless) Manslaughter* – defined by K.S.A. 21-5405(a)(1) as "the killing of a human being committed ***recklessly***." K.S.A. 21-5405(a)(1).

- Involuntary Manslaughter as defined by K.S.A. 21-5405(a)(2) applies to unintentional killings committed during the commission of another felony or misdemeanor enacted for the protection of human life or safety. There is no evidence the driver committed another felony or misdemeanor enacted for the protection of human life or safety.

- Involuntary Manslaughter as defined by K.S.A. 21-5405(a)(3) and (a)(5) are commonly referred to as Involuntary manslaughter while DUI. Meaning these two subsections can be proven when there is evidence the driver was under the influence of drugs or alcohol at the time of the killing. The toxicology examination of the driver's blood in this case did not show the presence of any impairing substances. As such, these subsections have no application to this case.

- Involuntary Manslaughter as defined by K.S.A. 21-5405(a)(4), prohibits a killing based on a "lawful act [committed] in an unlawful manner." This provision has been referred to as Kansas' "imperfect self-defense" statute since at least 1975. See *State v. Gregory*, 218 Kan. 180,185-86 (1975). More recently, in *State v. Nunez*, 313 Kan. 540, 551 (2021), the Supreme Court affirmed that this provision addresses "lawful exercise of self-defense, but with excessive force." There is no indication this situation was in any way related to an act of self-defense.

8. *Vehicular Homicide* – defined by K.S.A. 21-5406(a) as "the killing of a human being committed by the operation of an automobile, airplane, motor boat or other motor vehicle in a manner which creates an unreasonable risk of injury to the person or property of another and which constitutes a material deviation from the standard of care which a reasonable person would observe under the same circumstances." Vehicular Homicide is a Class A, person misdemeanor, punishable by 12 months in jail.

When a person causes injury to another person that does not result in death, the following criminal statutes are considered:

1. *Attempt* – defined by K.S.A. 21-5301(a) as "An attempt is any overt act toward the perpetration of a crime done by a person who intends to commit such crime but fails in the perpetration thereof or is prevented or intercepted in executing such crime." When a person is charged with an attempted murder or attempted manslaughter, homicide, the mental state required to commit the crime is defined by the murder or manslaughter charge.

2. *Aggravated Battery* – defined by K.S.A. 21-5413. The statute contains various severity levels depending on the nature of the injury – "great bodily harm" vs. "any manner whereby great bodily harm, disfigurement or death can be inflicted"—or whether a deadly weapon was utilized. Depending on the facts regarding each specific victim's injuries, the crime must be committed either "knowingly" or "recklessly."

Finally, the crime of Endangerment is defined by K.S.A. 21-5429(a) as "recklessly exposing another person to a danger of great bodily harm or death." Endangerment is a class A person misdemeanor, punishable by 12 months in jail.

IV. The Mental State Required by Kansas Law

Each of the homicide definitions above require prosecutors to prove that the person charged with the crime possessed the required thought process/ mental state (*mens rea*). In other words, the act of taking the life is not enough to sustain a murder or manslaughter charge. The act that caused the death of another person must also be accompanied by evidence that the crime was committed (1) intentionally; or (2) knowingly; or (3) recklessly.

Those three distinct mental states—intentional, knowing and reckless—have specific legal definitions as set forth in K.S.A. 21-5202. Notably, there is no negligent murder or manslaughter in Kansas as the concept of negligence is not sufficient to enable prosecution in Kansas criminal statutes.

Vehicular homicide as defined by K.S.A. 21-5406(a) does not contain a requisite mental state, so the appellate courts of Kansas have addressed that issue, as will be discussed below.

a. Intentionally

(1) **Intentionally**. K.S.A. 21-5202(h) states,

> A person acts "intentionally," or "with intent," with respect to the nature of such person's conduct or to a result of such person's conduct when it is such person's conscious objective or desire to engage in the conduct or cause the result. All crimes defined in this code in which the mental culpability requirement is expressed as "intentionally" or "with intent" are specific intent crimes. A crime may provide that any other culpability requirement is a specific intent.

Capital murder, first degree (premeditated) murder and second degree (intentional) murder, and the highest levels of aggravated battery each require an ***intentional*** *mens rea.* Meaning, to sustain any of these charges in the current case, the state must have evidence to prove beyond a reasonable doubt that the woman in the driver's chair intentionally drove the truck onto the soccer field intending to kill and/or seriously injure people.

b. Recklessly

(2) **Recklessly**. K.S.A. 21-5202(j) states,

> A person acts "recklessly" or is "reckless," when such person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

The crimes of first-degree (felony) murder based upon the "inherently dangerous felony" of aggravated endangerment of a child; second degree (reckless) murder, and involuntary (reckless) manslaughter each require a **reckless** *mens rea*.

To prove felony murder, the state would have to establish that the driver consciously disregarded a substantial and unjustifiable risk that circumstances existed (or that the results would follow) that would cause or permit a child under the age of 18 years to be placed in a situation in which the child's life, body or health is endangered, and that someone died in the process. This act of "disregard" would have to constitute a gross deviation from the standard of care which a reasonable person would exercise in the situation.

To prove second degree (reckless) murder, the state would have to prove beyond a reasonable doubt that the driver consciously disregarded a substantial and unjustifiable risk that circumstances existed (or that the results would follow) that would lead to the deaths of the victims. The State would have to prove that this act manifested extreme indifference to the value of human life.

To prove involuntary (reckless) manslaughter, it is not enough to prove that the woman in the driver's chair unintentionally caused the death of two other people. The state would have to prove the driver consciously disregarded a substantial and unjustifiable risk that circumstances existed or that the result would follow, and her disregard of those unjustifiable risks constituted a gross deviation from the standard of care which a reasonable person would exercise in the situation.

c. Knowingly

(3) **Knowingly**. K.S.A. 21-5202(i) states,

> A person acts "knowingly," or "with knowledge," with respect to the nature of such person's conduct or to circumstances surrounding such person's conduct when such person is aware of the nature of such person's conduct or that the circumstances exist. A person acts "knowingly," or "with knowledge," with respect to a result of such person's conduct when such person is aware that such

> person's conduct is reasonably certain to cause the result. All crimes defined in this code in which the mental culpability requirement is expressed as "knowingly," "known," or "with knowledge" are general intent crimes.

The only homicide charge that specifically requires the ***knowing*** *mens rea* is voluntary manslaughter. To prove that charge beyond a reasonable doubt, the state would have to prove that the woman in the driver's chair knowingly drove the truck onto the soccer field to kill the two victims, "upon a sudden quarrel or in the heat of passion." (see page 5, §6, above).

Regarding the ten victims who survived their injuries, certain definitions of aggravated battery also require a "knowing" *mens rea*. Meaning, the state would have to establish that she knowingly drove the truck onto the soccer field to cause great bodily harm (or the risk of great bodily harm, disfigurement or death).

d. Vehicular Homicide

The final crime under Kansas law that addresses the death of a person committed by a vehicle is *vehicular homicide.* Again, this crime is defined by K.S.A. 21-5406(a) as,

> ". . .the killing of a human being committed by the operation of an automobile, airplane, motor boat or other motor vehicle in a manner which creates an unreasonable risk of injury to the person or property of another and which constitutes a material deviation from the standard of care which a reasonable person would observe under the same circumstances."

At subsection (c), the statute defines the term, "material deviation," as follows:

> "As used in this section, "material deviation" means conduct amounting to more than simple or ordinary negligence but not amount to gross negligence.

Kansas Appellate Courts have attempted to add clarity to what constitutes the undefined notion of something "*more than simple negligence and less than gross negligence.*" These cases will be discussed at length below in the section entitled "Appellate Case Law."

V. Appellate Case law

a. Intentional Crimes

Beginning with consideration of the most serious charges, all of which require an intentional mental state—capital murder, first degree (premeditated) murder and second degree (intentional) murder— the Kansas Supreme Court recently reiterated what it means to act intentionally in *State v. Stanley*, 312 Kan. 557, 570 (2020):

> We have often stated "criminal intent is the intent to do what the law prohibits." *State v. Murrin*, 309 Kan. 385, 395, 435 P.3d 1126 (2019); *State v. Mountjoy*, 257 Kan. 163, 170, 891 P.2d 376 (1995). Our criminal code says that a person "acts 'intentionally,' or 'with intent,' with respect to the nature of such person's conduct or to a result of such person's conduct when it is such person's conscious objective or desire to engage in the conduct or cause the result." K.S.A. 2019 Supp. 21-5202(h). Under Kansas law, "intentionally" is the highest possible culpable mental state and requires " 'one person's "conscious objective" to be to cause a result, or to engage in conduct.' " *State v. Thach*, 305 Kan. 72, 83, 378 P.3d 522 (2016); see *State v. Dinkel*, 311 Kan. 553, 560, 465 P.3d 166 (2020). Put simply, conduct is intentional when it is " 'purposeful and willful and not accidental.' " *State v. Baacke*, 261 Kan. 422, 435, 932 P.2d 396 (1997).

Regarding the first of the two possible explanations for this incident, there is no evidence uncovered by detectives to support the conclusion that someone inside the cab of the truck intentionally placed the car from park into drive, then intentionally placed a foot on the gas and intentionally killed or injured people on the soccer field.

As to the second possible explanation, there is no evidence uncovered by detectives to support the conclusion that the woman in the driver's chair intentionally left the truck in drive, intentionally placed her foot on the gas and intentionally killed or injured people on the soccer field.

The crimes that require an intentional mental state—capital murder, first degree (premeditated) murder and second degree (intentional) murder—are not supported by the evidence in this case.

b. Reckless Crimes

Regarding the charges that require a reckless mental state---first degree (felony) murder while committing the crime of aggravated endangering a child; second degree (reckless) murder and involuntary (reckless) manslaughter—the Kansas Supreme Court's ruling in *State v. Remmers*, 278 Kan. 598 (2004), is instructive.

In *Remmers*, the Court held that running a stop sign, alone, is not reckless conduct. In that case, the defendant driver ran a single stop sign and struck another truck. The Court focused on the following facts presented in the *Remmers* case:

> Defendant told the police officer at the time of the accident that he was not sure which direction the other vehicle had been traveling. He further informed the officer that he was not paying attention and that he 'had his head up his ass.' The terrain at the location of the accident is flat, it was a clear day, and there were no obstructions to prevent defendant from seeing the other vehicle.

The *Remmers* Court ultimately held,

> In the case before us, the evidence shows defendant was driving on a rural road on a clear day. There was no evidence of speeding, swerving, driving erratically, or leaving the scene of the accident. Defendant's statement to the investigating officer was that he was inattentive and failed to see the stop sign or the approaching Smith vehicle. Evidence of defendant's mental state or aggravating circumstances necessary for a conviction of reckless driving is absent. We conclude the evidence herein is insufficient to support defendant's conviction of reckless driving.

When an inattentive driver fails to adequately pay attention and misses a traffic signal (stop sign), Kansas' appellate courts will not uphold a finding of *reckless* conduct on the part of the driver despite the fact the driver was in control of the vehicle.

In *State v. Huser*, 265 Kan. 228, 234 (1998), the Kansas Supreme Court addressed the case of a woman who drove while intoxicated and struck a pedestrian, breaking the man's leg. The driver (Huser) was convicted of DUI for driving while intoxicated and Reckless Aggravated Battery for the injury sustained by the pedestrian. The State argued it was reckless to make the

decision to drive while intoxicated. On Appeal, the Kansas Supreme Court upheld the DUI conviction but overturned the Aggravated Battery based on the following:

> Syl. 6 Additional evidence, beyond evidence that an accused was driving under the influence of alcohol, is necessary to create probable cause for reckless aggravated battery charges. Simply driving under the influence of alcohol does not, standing alone, amount to reckless behavior.

While the statutory definition of "reckless" was amended in 2010 by K.S.A. 21-5202(j) (detailed above) twelve years after the *Huser* decision was published in 1998, the point remains that to establish recklessness, the State cannot rely solely on the fact that a driver chose to drive drunk.

In *State v. Warnke*, 56 Kan.App.2d 996, 997-98 (2019), the Kansas Court of Appeals considered the case of a woman convicted of (reckless) aggravated battery for striking an Amish buggy from behind while talking (or just having finished talking) on her cell phone. The wreck killed a horse and broke the leg of one of the drivers.

The Court of Appeals ruled that talking on a cell phone while driving was not a reckless act nor did it constitute a gross deviation from the standard of care, which is instructive when applying the case to potential vehicular homicide cases. The *Warnke* court held,

> Syl. 4 Speaking on a cell phone while driving is not a violation of our traffic laws. Distracted driving caused by speaking on a cell phone may constitute negligence but in and of itself it does not constitute a *gross deviation* from the standard of care so as to support a criminal conviction for reckless aggravated battery. Nor does such conduct, without more egregious conduct or dangerous circumstances, exhibit a motorist's conscious disregard of a substantial risk that the motorist will collide with some vehicle ahead so as to support a criminal conviction.

In the current case, based on the evidence uncovered by the investigation, one of two scenarios led to the incident. Either the driver incorrectly believed she had placed her husband's truck into park when she stopped the truck in the parking stall or she placed it into park and by some unknown mechanism, the truck was inadvertently shifted into drive by one of the

occupants. Either way, the truck remained in the stationary position in the parking stall for 50 minutes, with the front tires resting against the 8-inch-tall curb.

There is no evidence to support the conclusion that she knew the truck was still in drive, or evidence to explain what motive she would have had to do so. Likewise, there is no evidence to explain how the column shift could have inadvertently shifted from park to drive. The driver had time before her children's next games and, having left at roughly 7:00 a.m. that morning to drive 219+ miles to the soccer fields at the Stryker complex, chose to take a nap in the driver's chair with the chair back fully reclined. The reasonable conclusion is that, while she slept, her foot unintentionally hit the gas pedal while the truck was in gear (either because it was inadvertently left in drive or was inadvertently shifted into drive), causing the truck to jump the curb. The single act of inattentiveness—leaving the truck in gear or inadvertently shifting it into gear--is the crux of the analysis. Her subsequent behavior – fumbling for the sun visor, reaching for (and initially missing) the brake, possibly hitting the gas – are noteworthy, but do not control this analysis because if the car had been in park, none of these acts would have mattered. Without the act of leaving the car in drive (or someone inadvertently placing the truck into drive without the driver's knowledge), this wreck would not have occurred.

The sole question then is whether (1) forgetting to place a truck into park and leaving the truck in drive or (2) somehow inadvertently contacting the column shift in a manner sufficient to shift into drive, would be sufficient to establish reckless conduct under the specific statutory definition set out in K.S.A. 21-5202(j) and the case law set forth above? The inescapable answer is no. There is no suggestion that she "***consciously disregarded*** a substantial and unjustifiable risk that circumstances existed or that a result will follow." With two of her children in the vehicle and a third somewhere out on the fields that lay ahead of the vehicle, her act of

intentionally reclining the driver's chair back to sleep, the logical conclusion is that she believed she had placed her vehicle into park as it rested against the curb.

If running a stop sign (*State v. Remmers*), driving drunk (*State v. Huser*); and talking on a cell phone while driving (*State v. Warnke*) are not sufficient to establish "recklessness," the act of coming to a stop and forgetting to place a vehicle into park—or going to sleep and inadvertently contacting the column shift—may be negligent, but are clearly insufficient to establish recklessness under Kansas law.

The crimes that require a reckless mental state -- first degree (felony) murder based on (reckless) aggravated endangering of a child, second degree (reckless) murder and involuntary (reckless) manslaughter -- are not supported by the evidence in this case.

c. Knowing Crimes

Regarding the charges that would require evidence of a knowing mental state—voluntary manslaughter and certain levels of aggravated battery—the Kansas Court of Appeals court recently stated what it means to act "knowingly" in particularly succinct language. *State v. Gallegos, unpublished*, 581 P.3d 367, 2025 WL 3687106 (2025):

> Again, the requirement that the act be committed "knowingly" demands an awareness of the circumstances.

There is no evidence uncovered by detectives to support the conclusion that the driver knowingly left the truck in drive or knowingly shifted it into drive while sleeping. There is no evidence to support the conclusion that she was "aware of the nature of" her conduct or that she was aware her "conduct [was] reasonably certain to cause the result."

The crimes that require a knowing mental state—voluntary manslaughter or aggravated battery—are not supported by the evidence in this case. With regard to voluntary manslaughter

there is no evidence she was acting in the heat of passion, as that term is defined by law, which is another reason that statute has no application to this situation.

d. Vehicular Manslaughter

The analysis then turns to consideration of a potential violation of K.S.A. 21-5406(a), the misdemeanor vehicular homicide statute. Although the *Remmers* case did not involve a fatality collision, the Court took the opportunity to re-state and discuss its prior decision in *State v. Krovvidi*, 274 Kan. 1059, (2002), which reviewed the sufficiency of the evidence in a conviction for vehicular homicide, K.S.A. 21-5406(a). In *Krovvidi*, the Court held,

> The required "material deviation" element for a conviction of vehicular homicide under K.S.A. 21-3405 [later reclassified as K.S.A. 21-5406] requires something more than ordinary or simple negligence yet something less than gross and wanton negligence. It is determined on a case by case basis based upon the totality of the circumstances.

As discussed in *Remmers,*

> In *State v. Krovvidi,* 274 Kan. 1059, 58 P.3d 687 (2002), it was held that running a red light as a result of inattentiveness, standing alone, did not satisfy the element of material deviation from the standard of care required for vehicular homicide.

A recent case that provides a decent application of *Krovvidi's* analytical framework is *State v. Allen*, 49 Kan.App.2d 162, 180-181 (2013):

> The *Krovvidi* court rightly eschewed imposing any bright-line rule or a requirement to establish an aggravating factor *independent* of a traffic infraction because [...] one could easily imagine conduct qualifying as a simple traffic infraction that would *simultaneously* constitute a material deviation sufficient for vehicular homicide without any additional aggravating factor-passing a stopped school bus with its lights flashing under K.S.A. 8–1556, for example.
>
> . . .
>
> The *Krovvidi* court, in dicta, identified the following examples of conduct that could amount to a material deviation under K.S.A. 21–3405: drinking, drug use, warnings from a passenger, reckless driving, accelerating while approaching an intersection, and speeding. 274 Kan. at 1075, 58 P.3d 687. A panel of this court subsequently noted that this list was "certainly not intended to be exhaustive." *State v. Carter,* No. 101,510, 2010 WL 174062, at 5

> (Kan.App.2010) (unpublished opinion), *rev. denied* 291 Kan. 913 (2011). Likewise, the Kansas Supreme Court identified examples of conduct that might constitute reckless driving in *State v. Remmers,* 278 Kan. 598, 602, 102 P.3d 433 (2004), when it noted that the evidence in the case before it showed that the defendant was driving on a rural road on a clear day and there was no evidence of "speeding, *swerving,* driving erratically, or leaving the scene of the accident."

One appellate case that upheld a conviction for vehicular homicide is *State v. Trcka*, 20 Kan.App.2d 84 (1994). In that pre-*Krovvidi* case, the Kansas Court of Appeals reviewed a case where a semi-truck driver had been convicted of vehicular homicide after he crashed into the back of a pilot vehicle in a construction zone. That defendant argued he was not the proximate cause of the collision because the pilot vehicle he struck kept stopping intermittently in the roadway. The pilot truck for the construction company had emergency four-way flashing light signals and a large orange sign saying "'Pilot Truck Follow Me.' in bold black letters" with an amber flashing light attached to the top. It stopped intermittently to pick up sandbags and traffic cones. The Court held the combination of multiple signs preceding the construction zone giving warning to "Be Prepared to Stop," it being within a construction zone, and the vehicle he struck having big flashing lights and a sign drawing attention to it all equated to proximate cause and a material deviation sufficient to establish vehicular homicide. The court specifically stated:

> We agree with the State that for a professional driver to be oblivious to his surroundings while propelling a semitrailer truck down a highway at 50 to 55 miles per hour is closer to reckless and wanton conduct than to simple negligence. Viewing all of the evidence in the light most favorable to the prosecution, we hold that a rational factfinder could have found that Trcka's conduct constituted a "material deviation" from the standard of care which a reasonable person would observe under the same circumstances.

Several key facts in the *Trcka* decision are distinguishable from the current case: a volitional driver in control of the vehicle compared to a sleeping occupant of the driver's chair who thought she left the car in park; the presence of flashing lights and a large sign on the struck

vehicle in a marked construction zone compared to a windshield covered by sunscreens by a third party.

The ultimate question in this situation, based on the case law, is whether a woman who chose to nap in what she thought was a parked truck is guilty of a "material deviation"? The *Krovvidi* Court made it clear that "running a red light as a result of inattentiveness, standing alone, did not satisfy the element of material deviation from the standard of care required for vehicular homicide."

VI. Hindsight Bias

The Kansas Supreme Court has cautioned prosecutors to be careful of situations where "a prosecutor may feel the need to vindicate the wrong." *State v. Cummings*, 297, Kan. 716, 726 (2012). The *Cummings* court focused on the risk of "hindsight bias" in emotionally volatile situations and overturned the involuntary manslaughter conviction involving an infant victim based, in part, on the risk the jury was misled by hindsight bias. Summarized, in the *Cummings* case, a child was placed in a car seat to take a nap, but the child was not appropriately secured. The child slipped, the harness caught under the child's chin and the child suffocated to death. The question posed by the court was whether this was truly a reckless act or whether it simply looked reckless because the child died. Put another way, the court asked, would we charge every parent who puts a child down for a nap in the same fashion (without properly fastening the child seat) with reckless endangerment of a child, if the child did not die? If not, we should not charge the case based solely on hindsight bias, in an attempt to address the worst possible outcome having occurred.

> "Without evidence establishing the increased level of risk, it is difficult to imagine that the State would have even prosecuted Cummings under identical circumstances in the absence of K.H.'s death, *i.e.*, the influence of hindsight bias was enormous."

The analogy to the current case is clear. We do not charge people who stop their cars in a proper location (parking stall) thinking they put the car into park or people who take a nap in the driver's chair of their cars with reckless driving, endangerment or any other crime. Either the car was inadvertently shifted from park into drive while she slept or, more likely, she thought she put the car into park and left it in drive. Taking a nap under either explanation does not make her conduct criminal.

VII. Conclusion

A prosecutor's decision whether to charge a case requires a determination as to whether probable cause exists to believe a crime was committed and ultimately, whether evidence would both support a conviction beyond a reasonable doubt and withstand scrutiny of the applicable law upon any subsequent appeal. This standard is applied to every case presented to our office, regardless of the sympathies evoked or the degree of loss suffered by the community.

There is no evidence that this driver intentionally, recklessly (as that word is defined in Kansas law) or knowingly drove onto the soccer field.

Nothing suggests the driver knew the truck was in drive (or had been inadvertently shifted into drive) when she put her foot on the gas while sleeping. That the driver's chair-back remained in the fully reclined position after the wreck when others ran to the truck; and that the sunscreens were still in place (while her own child was on a field somewhere) all constitute affirmative evidence that she did not act intentionally, or knowingly.

To charge this driver with a reckless crime, the state would have to establish that when she decided to take a nap in a running car, the driver consciously disregarded a substantial and unjustifiable risk that circumstances existed or that the result would follow, and her disregard of those unjustifiable risks constituted a gross deviation from the standard of care which a reasonable

person would exercise in the situation. In other words, she would have to have known the truck was in drive (or would be placed in drive) and further recognized that by falling asleep, she risked inadvertently pressing the gas pedal and killing and hurting people. There is no evidence to support such conclusions.

With respect to the misdemeanor charge or vehicular homicide, there must be evidence to support the legal determination that the driver committed a "material deviation." The quote from the *Remmers* decision detailed above, controls the analysis:

> In *State v. Krovvidi,* 274 Kan. 1059, 58 P.3d 687 (2002), it was held that running a red light as a result of inattentiveness, standing alone, did not satisfy the element of material deviation from the standard of care required for vehicular homicide.

One negligent act -- whether running a stop sign, forgetting to put a stopped vehicle into park, or not being aware a column shift had been inadvertently moved from park into drive while you were sleeping -- is insufficient under Kansas law to support the required finding of a "material deviation" necessary to charge vehicular manslaughter. Kansas has no negligent homicide statute.

Kansas law does not support the filing of criminal charges in this case.

Marc Bennett
District Attorney

Answers to Additional Questions

1. Question: Why hasn't the driver been named?

Answer: Public comments are governed by the ethics code as set forth by the Kansas Supreme Court. Rule 3.6 says that – outside of court – we can discuss only certain, basic aspects of charged cases: the name of a ***charged*** defendant; the nature of the charges; et cetera.

There is no rule that allows us to discuss facts, names, details, or share video/ audio recordings or physical evidence with the public outside of a courtroom or to provide details regarding an ***uncharged*** suspect. It would be a violation of the ethics rules to do so.

Rule 3.8(f) goes on to say, the prosecutor must "refrain from making extrajudicial [outside of court] comments that have a substantial likelihood of heightening public condemnation of the accused and ***exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor*** in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this rule."

The only exception to this rule is when a suspect in a case has been identified but not apprehended. In such situations, law enforcement may notify the public that a specific armed or dangerous suspect is at large and/or ask the public's help in locating the named, but uncharged, suspect.

2. Question: why wasn't the driver held for 72 hours after the event?

Answer: According to Kansas law, a person may be booked into jail by law enforcement when the law enforcement agency has probable cause to believe the suspect committed a specific crime. To book any suspect, the officer must fill out an affidavit in support of the arrest which details the specific crime the suspect is believed to have committed and the facts that support such claim.

Pursuant to K.S.A. 22-2901, "If the arrest has been made on probable cause, without a warrant, he shall be taken *without unnecessary delay* before the nearest available magistrate and a complaint shall be filed forthwith."

Meaning, there is no basis under Kansas law to simply hold someone for 72 hours without charges.