IN THE SUPREME COURT OF MISSOURI

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| **STATE OF MISSOURI ex rel. SANDRA KEMPER** | ) | |
| Relator, | ) | No: SC87246 |
| vs. | ) | |
| **THE HONORABLE DAVID LEE VINCENT**, Judge of the Circuit Court of St. Louis County, Div. 9 | ) | |
| Respondent. | ) | |

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**WRIT OF PROHIBITION FROM THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS, STATE OF MISSOURI**

**HONORABLE JUDGE DAVID LEE VINCENT, DIVISION 9**

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# RELATOR'S REPLY BRIEF

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THE ROACH LAW FIRM
SUSAN K. ROACH #30081
190 CARONDELET PLAZA, SUITE 1115
CLAYTON, MO 63105
(314) 863-6369
(314) 863-6653 (FAX)
E-Mail: Sroachlaw@aol.com
ATTORNEYS FOR RELATOR

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## ARGUMENT I

**THE GRANTING OF A MISTRIAL BY THE RESPONDENT TRIAL JUDGE SUA SPONTE ON SEPTEMBER 20, 2005 AND THE RESPONDENT'S DENIAL OF RELATOR'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION ON OCTOBER 6, 2005 WAS ERROR AND RESULTED IN THE RELATOR BEING PLACED IN THE POSITION OF DOUBLE JEOPARDY IN VIOLATION OF THE FIFTH AMENDMENT AND THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION ON THE CHARGES OF ARSON IN THE FIRST DEGREE, MURDER IN THE FIRST DEGREE AND THREE COUNTS OF ASSAULT IN THE FIRST DEGREE FOR THE REASON THAT NO CIRCUMSTANCES EXISTED JUSTIFYING THE RESPONDENT TO GRANT A MISTRIAL UNDER THE MANIFEST NECESSITY DOCTRINE AND THE RESPONDENT FAILED TO EXERCISE SCRUPULOUS JUDICIAL DISCRETION IN GRANTING THE MISTRIAL AND NEITHER THE STATE OF MISSOURI NOR RELATOR ENGAGED IN ANY ACTIVITIES DURING THE COURSE OF THE TRIAL WHICH JUSTIFIED OR CREATED A NEED FOR THE GRANTING OF A MISTRIAL**

In this case the Relator offered evidence that a polygraph examination had taken place. This evidence was offered pursuant to an Order prepared by Respondent in response to the State's Motion in Limine to exclude evidence of the Defendant's

polygraph examination. According to the Respondent's Brief, the Respondent denied the State's motion based on **Crane v. Kentucky**, 476 US 683 (1986) and **Rogers v. Commonwealth**, 86 S.W.3d 29 (Ky.2002). Relator completely agrees with Respondent's pre-trial order in this regard.

In **Rogers v. Commonwealth**, supra the defendant made a videotape confession after an extensive police interrogation that was similar in scope and nature to this case. The trial court prohibited defendant from introducing evidence that he had confessed to committing the crimes after the interrogating officers informed him that he had failed a polygraph examination. The polygraph examination had not been conducted in accordance with administrative regulations and accepted procedures. The Supreme Court of Kentucky held that despite Kentucky's long-standing exclusion of evidence of polygraph results and rejection of any inference to polygraph examinations, in the circumstances of that case, the defendant's right to present a defense made it error not to admit the evidence. The court stated, "The crux of Appellant's defense is that he was coerced and coached into a confession by the interrogation techniques - - including the use of a polygraph examination . . .Appellant contends that when the investigating officers informed him that he had failed the polygraph examination and that he had lied to Lt. Payton in the process, he- in large part because of his limited intellectual capabilities... confessed to a crime he did not commit. By preventing Appellant from making any reference to the polygraph examination, the trial court pulled the proverbial "rug out from under" Appellant's defense and left Appellant unable to present the jury with the factual

circumstances that he alleged caused him to confess falsely." **Rogers v. Commonwealth**, Id at 39.

The **Rogers** court ultimately held, based partly on the aforementioned **Crane v. Kentucky** case that a defendant has a right, as a matter of trial strategy, to bring evidence of a polygraph examination before the jury to inform the jury as to the circumstances in which a confession was made. The **Rogers** court also cited another persuasive case. In **State v. Schaeffer**, 457 N.W.2d 194 (Minn.1990), the Supreme Court of Minnesota addressed the defendant's right to present evidence about the polygraph examination in order to show the jury that the interrogation leading to the confession had coercive aspects to it. The **Schaeffer** court held that such evidence was admissible despite Minnesota's general prohibition against polygraph evidence. These cases are directly on point to the facts and circumstances of this case.

Respondent's brief alleges that Relator somehow overstepped some invisible boundary regarding polygraph evidence in this case, necessitating a mistrial. The record, however, clearly does not support this conclusion. The record, however, does establish that there is absolutely no support for this argument or this conclusion. Respondent complains that the Relator mentioned "polygraph results" during opening statement. The portion of the opening statement provided by Respondent is indicative of the defense theory of the case that the State lacked conclusive physical evidence and that the Relator's purported confession was unreliable due to the facts and circumstances under which it was made. The relevant portion of the opening statement was as follows:

"And finally when it got to be about 2:30, 3:00 in the afternoon, and it was clear to her that they had focused their investigation on her, she said, I'll take a polygraph. And she will tell you her sole reason in doing that is that she thought that that polygraph would exonerate her.

And you'll hear expert testimony in this case from defense witnesses. Dr. David Raskin, who is world renowned, worked on the Patty Hearst case, the Ted Bundy case, and primarily has testified on behalf of the government. He will testify that the manner in which that polygraph was conducted on Sandra Kemper, after she said she wanted to do it, was not the way it's done; wasn't professional. It wasn't administered in a professional way, it wasn't scored in a professional way. And despite the fact that Detective Schuenzel told Sandra Kemper, when she was hooked up to this polygraph strapping for three and a half hours, that she had flunked the test; despite the fact that he said she would be crushed, repeatedly; despite the fact that he said she'd sit in jail and get the death penalty, and even made a little noise of the needle going in as he was interrogating her, all on tape; that she didn't flunk the test. She was not deceptive." (A.2-3 from Supplemental Appendix of Respondent.)

**The State made no objection during this portion of Relator's opening statement, nor did Respondent, sua sponte, admonish Relator, or provide any notice**

**that he intended that his pre-trial ruling was intended to exclude polygraph results**. (Emphasis provided) The reason is quite clear. Counsel for the Relator's opening statement was completely consistent with the courts pre-trial ruling with regard to the admissibility of the polygraph examination and the Respondent did not intend for his pre-trial ruling to exclude polygraph results.

Respondent next addresses the polygraph evidence elicited during Relator's cross examination of Detective Melissa Webb. Respondent states in his brief that the State continually objected to evidence of the polygraph. This rather bold assertion is simply not supported by the record. In addition to the lack of objection during the opening statement, the State offered few objections during the cross examination of Det. Webb. The first mention of "polygraph" in Relator's cross examination was not objected to by the State:

> Q. And then she only became agitated when you told her, you said, Well, Steven and Jay saw the flames shooting up the floor of the shower at the same time she was the fire was only three feet high. And when she became agitated, what did she say?
>
> A. She said - - do you want me to read it verbatim from the report?
>
> Q. Sure.
>
> A. She said, I will take a polygraph if you do not believe me.
>
> Q. So she requested to take a polygraph, did she not?

A. Yes, ma'am (A.302-303 from Appendix of Relator's Brief).

***

Q. Okay. But she requested to take a polygraph, unlike anybody else who was in the station that night, did she not?

A. She did request to take a polygraph.

Q. And, in fact, that's exactly what occurred, is it not?

A. After we asked her if she felt Steven had maybe possibly set the fire.

Q. So she said first, I'll take a polygraph if you don't believe me. And then you thought, well, we're not going to get anywhere with her. She wants to take a polygraph. So then the next thing out of your mouth was if she thought Steve could have been setting the fire for insurance. Correct? Isn't that what you asked her?

A. It says that I asked her if she thought Steven could have been setting the fire for the insurance.

Q. Okay. And then she said, Well, I'll not only take a polygraph if you don't believe me, but I'll take one to prove he had nothing to do with the fire, correct?

A. Her exact words were, No. And I'll take a polygraph to prove Steven had nothing to do with the fire. (A.304-305 from Appendix of Relator's Brief).).

***

Q. Now, so these audio statements that the jury has heard, and that you

testified regarding, the one that was made at, you know, about eight-thirty, the other one at nine-fifty or ten o'clock at night. Is it a fair statement that those audio statements were made only after Sandra Kemper had been in another room with Detective Scheunzel, hooked up to a polygraph, strapped into a polygraph chair for about three and a half hours?

A. Those tapes were made after the polygraph.

Q. Okay. So there was a lot of time that transpired between the time she said -- you stopped with her in the morning, she said, I want a polygraph. That whole process took place at about eight-thirty or nine o'clock at night. Is that correct? And there were many officers who talked to her. Is that also correct?

A. I don't understand your question. I apologize. I –

Q Okay. First of all, was there a significant period of time that had elapsed?

A. What's a significant period of time? If she -- you said that the polygraph lasted how long, ma'am?

Q. About three and a half hours. Not the polygraph, but the whole interrogation process with Detective Schunzel. So when did she come back to you? About what time?

A. It would have been directly after the polygraph. Once the polygraph is concluded.

Q. Do you think she was in that polygraph room for five hours? Because she

didn't make that audio statement until eight something that night. It's military time, but it's twenty something that she made that audio statement. Isn't that correct?

A. I believe it was -- wasn't it -- twenty forty-eight was the first audiotaped statement. (A316-318 from Appendix of Relator's Brief).

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The first objection to polygraph evidence made by the State was as follows:

Q. Now, don't you think it's important for this jury to know exactly what went on with Detective Scheunzel, and all the fine things he had to say to her at some great length, before they hear these audio statements that were made that evening? Don't you think that would be fair, that they hear and see the whole picture? I mean, you know, you're the case person, don't you think out of a sense of fairness, that as the triers of fact, that they should see it all? I mean, we realize they don't have cameras in those little rooms that you had her in in the morning. We can't provide them with that. We can't provide them with a camera of what she looked like, or what you looked like, or what any of the officers looked like in these evening interrogations. But don't you think that a big middle portion of this, when she was hooked up to the polygraph equipment by Detective Scheunzel, should be made known to the jury?

MR. DUEPNER: Your Honor, I'm going to object. The reason for my objection

is, counsel for the defendant knows full well that the State of Missouri cannot elicit testimony about a polygraph examination.

MS. ROACH: Your Honor, that is absolutely untrue. I have begged and pleaded this Court for a couple of years to have the State present the whole case.

Respondent argues, in his brief, that this exchange raised an adverse inference that the State was hiding admissible evidence, triggering the doctrine of curative admissibility. This argument makes absolutely no sense based upon on the record. The State directly asked Detective Webb regarding polygraph results to-wit:

Q. Did Detective Schuenzel communicate...**results of this polygraph test?...**

Q. Did he tell you what was the **result**, what he thought after he gave her the polygraph test?

A. He... stated... she had shown **signs of deception.** (Tr.42-43).

After the testimony of Det. Webb, Respondent admonished the State of Missouri, stating, "I was going to note that the results of polygraph examinations are not admissible in a State of Missouri court of law. However, I also will note that, Mr. Duepner, you entered, or opened the scope of that issue when you examined this last witness on signs of deception. So that Ms. Roach, through your witness, you will be able to give – to respond to the signs of deception." (See Appendix A230). This exchange can hardly be argued realistically by the Respondent that this supports the Respondents claim that the doctrine of curative admissibility was triggered by Relator's response to Respondent's objection. It should also be noted that the statements of counsel for the Relator which Respondent

argues triggered the doctrine of curative admissibility were not evidence at all. They were simply the arguments of counsel. Curative admissibility requires that one party submit "evidence" to the extent that the opposing party must be allowed to submit evidence of a curative admissibility nature even if it is inadmissable. Consequently, there was no evidence submitted by the Relator to trigger the doctrine of curative admissibility. The doctrine of curative admissibility simply does not apply to this case. First, Relator did not 'inject' the issue of polygraph evidence into this case since it was previously decided by Respondent in his pre-trial order that it was relevant, admissible evidence that could be presented at trial. Secondly, in order for the doctrine of curative admissibility to apply, a new issue must be raised.

In support of the Respondents curative admissibility argument, Respondent cites **State v. Phillips**, 939 S.W.2d 502 (Mo.App.1997) wherein the Court held that the trial court properly permitted the state to cross-examine the defendant about whether he was using drugs at the time he allegedly committed the offense. The Court reasoned, in part, that the defendant interjected the issue of drug use by questioning the victim as to whether she had been using drugs. The Court stated that "under the doctrine of curative admissibility, "where the defendant has injected an issue into the case, the state may be allowed to admit otherwise inadmissible evidence in order to explain or counteract a negative inference raised by the issue defendant injects." **State v. Phillips**, supra. The problem with applying that reasoning to the instant case is that is it is wholly unsupported by the record. The State filed a Motion to Exclude Polygraph Evidence which was denied

by Respondent pre-trial. Respondent clearly stated, during the trial, that the State "opened the door" to the admission of polygraph results to counter the State's statement through Det. Webb that the Relator had been deceptive. Consequently, Relator did not 'inject' an issue into the case, but rather, followed the various rulings made by Respondent.

Respondent next complains in his brief that the Relator, through defense expert Dr. David Raskin, elicited testimony about the polyscore computerized results and that the Relator had... "Twelve chances in one hundred that Ms. Kemper was being deceptive or alternatively eighty eight chances in one hundred... of being truthful" to specific questions asked during the polygraph. (A.64-65, 77, 88 from Supplemental Appendix of Respondent). Clearly, this assertion rings hollow considering it occurred **after** Respondent stated, on the record, that the Relator, through Dr. Raskin would be able "to respond to the signs of deception." Additionally Dr. Raskin's comments as to the polyscore results were only set forth on the record after being identified by Dr. Raskin as results subpoenaed from the State to which the State offered **no objection** when introduced by Relator. This testimony was admissible pursuant to **Crane v. Kentucky**, and its progeny, which allows the Relator to present "evidence of a polygraph examination before the jury to inform the jury as to the circumstances in which a confession was made."

Respondent also contends that Dr. Raskin's testimony went beyond its proper scope. In actuality, the records reflect that despite a running objection to Dr. Raskin's

testimony by the State and numerous individual objections and sidebars throughout his testimony, Respondent allowed Dr. Raskin's unfettered testimony regarding the manner in which the polygraph was conducted and whether Det. Scheunzel had relayed the true results of the test to Relator.

Respondent furthers contends that "Relator presented inadmissible evidence of the results of the polygraph examination contrary to **State v. Biddle** and contrary to the limited purpose of whether defendant's statement was freely and voluntarily made under all of the circumstances surrounding and attending the making of the statement." Aside from the fact that **State v. Biddle** is not controlling in this situation, certainly Respondent cannot realistically contend that any portion of the record, nor any written rulings, made prior to Respondent's declaration of a mistrial set forth any such limited purpose. The Relator challenges the Respondent to cite this court to any statement or portion of the record wherein the polygraph examination was limited only to whether the Defendants statement was freely and voluntarily made under all of the circumstances surrounding and attending the making of the statement.

In **Rogers v. Commonwealth**, 86 S.W.3d 29 (Ky.2002), cited by Respondent in his brief, this case involved a confession that occurred after the police interrogator administered a polygraph and then lied to the suspect about the results. This was known to all the parties to be a major component of Relator's defense. The clear purpose behind Dr. Raskin's testimony was to show the jury that the test was administered in an unprofessional and unfair manner and the results were, therefore unreliable. The

Respondent cites several cases that illustrate classic examples of manifest necessity. Unfortunately for the Respondent, none of these cases are analogous to the case before this court presently. In **State v. Franks**, 702 S.W.2d 853 (Mo.App.E.D. 1986), a juror came forward after the jury had been impaneled and sworn and told the court that a deputy sheriff had mentioned to four other jurors the previous evening that this case had been tried twice before and ended with a hung jury each time. The jury said that these four jurors had expressed immediate concern as to the possibility of reaching a verdict since two other juries had failed previously and that the information had been conveyed to all other jurors by breakfast the following day. These facts are clearly irrelevant to the case presently before this court. In **State v. Lee**, 948 S.W.2d 627 (Mo.App.E.D. 1997), as cited by the Respondent, the trial judge realized, after the trial had begun, that he was acquainted with several members of the defendant's family. Given his friendship with the defendant's father and uncle, the trial court in that case determined that it would be improper for him to continue presiding over the trial. Again, these facts are grossly distinguishable and have no bearing whatsoever on the instant case.

Continuing this "shotgun approach" in an attempt to formulate a valid reason for the granting of the mistrial, Respondent cites **State v. Aguilar**, 478 S.W.2d 351 (Mo.1972), wherein counsel for the defendant asked a witness, during cross examination, about injuries sustained by the former co-defendant at the scene of the crime. The court sustained the State's objection, stating that the line of questioning called for irrelevant facts. Counsel for the defense continued to inquire regarding the circumstances of the

former co-defendants case, and the State moved for a mistrial. The trial court sustained the motion, stating that questions were "so prejudicial to the State's case that there would be no relief that could erase the matter from the minds of the jury." **State v. Aguilar,** Id. at 355. In **Aguilar**, the Court held that "in this case, counsel for appellant had to know that the result in the case of appellant's brother was totally irrelevant to the issues in appellant's case, and in addition to what necessarily had to be of knowledge to trained counsel, the court had admonished that 'the outcome of another trial has no bearing on the issues of this matter.' The court concluded that notwithstanding, counsel for appellant, with what we must conclude was premeditated and deliberate conduct, brought before the jury the fact that the case against appellant's co-conspirator and companion in the commission of the burglary for which appellant was on trial had been dismissed and that the act of bringing this information to the jury was premeditated and constituted deliberate conduct. The court in **Aguilar** concluded that counsel for the defendant had not, in good faith, attempted to ask an improper question." Unlike **Aguilar**, Relator scrupulously followed the rulings set forth by Respondent and did not present 'inadmissible, prejudicial evidence", rather, Relator properly set forth a proper defense pursuant to the Respondent's pre-trial rulings and rulings during the trial.

Respondent's Brief is also noteworthy for that to which it fails to respond. Most notably, the Respondent neglects to address the issue raised by the Relator, to-wit: the Respondent failed to engage in a "scrupulous exercise of judicial discretion" before granting the mistrial. A simple review of the reasoning given by the Respondent, as set forth in

Relator's Brief (Tr.145-165) illustrates that the Respondent stated no specific legal reasons for granting the mistrial. Instead, Respondent expressed apparent confusion as to his pre-trial and trial rulings allowing polygraph results. The Respondent has failed to appropriately respond to the Relator's argument as it pertains to **United States v. Jorn**, 400 U.S.470 (1971). In **United States v. Jorn**, Id. at 484 the court stated "...where the Judge, acting without the defendants consent, aborts the proceeding, the defendant has been deprived of his valued right to have his trial completed by a particular tribunal." The court went on to state that in the absence of a motion for mistrial by the defendant the...doctrine of manifest necessity stands as a command to trial judges not to foreclose the defendants option until a scrupulous exercise of judicial discretion leads to the conclusion that the ends of public justice would not be served by continuation of the proceedings." **Jorn**, Id. at 485. The Respondent has woefully failed to establish any indicia of a scrupulous exercise of judicial discretion prior to granting the mistrial. The Respondent's failure to do so effectively foreclosed the defendant's option to complete her trial and obtain an acquittal which serves the end of justice the same as does a conviction.

The Respondent also fails to adequately address the "rule of completeness" which, in this case, necessitated the presentation of the Scheunzel interrogation and the ultimate polygraph examination and results. The Respondent attempts to side step the rule of completeness and holding in **State v. Baldwin**, 808 S.W.2d 384 (Mo.App.S.D.1991) by making the unsupported and unsubstantiated statement that **State v. Mick**, 546 S.W.2d 508 (Mo.App.1976) is no longer current law in the State of Missouri because the State and the

Relator in this case did not "stipulate" to the admission of polygraph exam result. This argument is a canard. **State v. Baldwin**, which is a 1991 case and a post **State v. Biddle** case which was decided in 1980 specifically refers to **State v. Mick** when it held that the general rule that polygraph examinations are not admissible is subject to exceptions and referenced the situation of **State v. Mick** where the accused, under questioning by her lawyer regarding her delay in informing police of a claimed alibi answered she was talking to a detective... and set up with him to take this polygraph test." Over the accused objection the State was thereafter allowed to establish, by questioning the accused, that she took a polygraph examination and failed it.

It is clear that none of the cases cited by the Respondent to establish that there was a manifest necessity for the granting of a mistrial are remotely analogous to the factual circumstances of the instant case.

Respondent is also silent with regard to the fact that Relator was lied to by Det. Schuenzel when she was falsely told that she had failed the polygraph. "The rule in Missouri, as well as in a majority of states, is that statements obtained through subterfuge are admissible **unless** the deception offends societal notions of fairness or is likely to procure an untrustworthy confession." **State v. Molitor**, 729 S.W.2d 551, 556 (Mo. App. 1987) and **State v. Pugh**, 600 S.W.2d 114, 118 (Mo. App. 1980) as cited in **State v. Wilson**, 755 S.W.2d 707, 709 (Mo. App. 1988).(emphasis provided). In this case, Dr. Raskin testified without refutation that the "confession" obtained from the Relator was completely untrustworthy. The subterfuge in this case began by Det. Schuenzel falsely informing the

Relator that she had failed the polygraph which was not conducted in accordance with accepted procedures. The subterfuge continued by the State's tardy production of exculpatory polyscore evidence six days before the trial. Surely, this conduct offends societal notions of fairness. To bar Relator from presenting evidence of the circumstances that prompted her confession would deprive Relator of her ability to answer the jurors critical question,**"Why did she admit guilt if she was innocent?"** The court opined in **State v. Wilson**, supra at 709. "The trustworthiness of the statement is further demonstrated by the accuracy of the details which correspond to the physical evidence." The Relator's arson expert, Daniel Anderson and the State's arson expert, Detective Raines both acknowledged that the fire and the resulting death of the Relator's son could not have happened consistent with Relator's audio confession. For instance, if Relator had stood in the burning room for twenty to thirty minutes and watched the fire proceed, she would have died from the fires' effects. Relator's video arson presentation Fire Power resounded the inability of Relator's confession details to correspond to physical evidence. These evidentiary factors further accentuate Respondent's lack of manifest necessity in granting a mistrial.

The Respondent's granting of a mistrial constituted a "change of mind" completely lacking in legal under pinning.

The Respondent's issues concerning Relator's expert Dr. Raskin's opinion evidence as to polygraph procedures and results were only rendered "prejudicial" to the State due to the improprieties of the State's witness, Detective Scheunzel upon which Dr. Raskin properly commented in a manner to "assist the trier or fact to understand the evidence or determine

disputed facts." Dr. Raskin's "impressive" professional credentials as opposed to Detective Scheunzel's lack thereof do not constitute appropriate grounds for a mistrial.

Finally, Respondent asserts that Relator's Petition for Writ of Prohibition should be denied because the trial court acted within its jurisdiction to declare a mistrial. While it is axiomatic that a trial court has the authority to grant a mistrial in any case the Respondent had no legal basis upon which to base the mistrial. Based upon the Respondent's pre-trial order which was complied with by both Relator and the State, the Respondent exceeded his jurisdiction by denying Relator's Motion to Dismiss for lack of jurisdiction and granting the mistrial. Prohibition is appropriate to prevent unnecessary, inconvenient and expensive litigation. **State ex rel the Police Retirement System of St. Louis v. Mummert III**, 875 S.W.2d 553, 555 (Mo.banc1994). Given the factual circumstances of this case, prohibition is certainly appropriate.

## CONCLUSION

The Respondent's overruling of the Relator's Motion to Dismiss said mistrial constituted and arbitrary and unreasonable abuse of discretion which shocks the sense of justice and indicates a lack of careful consideration. In so doing, the Respondent has placed the Relator twice in jeopardy.

**THE ROACH LAW FIRM**

SUSAN K. ROACH #30081
190 CARONDELET PLAZA, SUITE 1115
CLAYTON, MO 63105
(314) 863-6369
(314) 863-6653 (FAX)
E-Mail: Sroachlaw@aol.com
ATTORNEYS FOR RELATOR

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed this 22nd day of February, 2006 to Mr. John Duepner, Office of the Prosecuting Attorney for St. Louis County, 100 South Central, Clayton, MO 63105 and Honorable David Lee Vincent, St. Louis County Court House, 7900 Carondelet Ave., Division 9, St. Louis, Missouri 63105 and the word count of Relator's Reply Brief is 5,174 and that the attached disc containing Relator's Reply Brief is deemed "virus free" pursuant to the Norton Anti Virus scan utilized on said disc by counsel for Sandra Kemper.

IN THE SUPREME COURT OF MISSOURI

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**WRIT OF PROHIBITION FROM THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS, STATE OF MISSOURI**

**HONORABLE JUDGE DAVID LEE VINCENT, DIVISION 9**

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**APPENDIX TO RELATOR'S REPLY BRIEF**

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SUSAN K. ROACH #30081
190 CARONDELET PLAZA, SUITE 1115
CLAYTON, MO 63105
(314) 863-6369
(314) 863-6653 (FAX)
E-Mail: Sroachlaw@aol.com
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SUSAN K. ROACH #30081
190 CARONDELET PLAZA, SUITE 1115
CLAYTON, MO 63105
(314) 863-6369
(314) 863-6653 (FAX)
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The undersigned hereby certifies that a true and correct copy of the foregoing was mailed this 22ND day of February, 2006 to Mr. John Duepner, Office of the Prosecuting Attorney for St. Louis County, 100 South Central, Clayton, MO 63105 (Phone number: 314-615-2600) and Honorable David Lee Vincent, St. Louis County Court House, 7900 Carondelet Ave., Division 9, St. Louis, Missouri 63105 (Phone number: 314-615-1509).