



**OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT**

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Q1. How many reports did the Wichita Police Department receive concerning Lucas Hernandez prior to Ms. Glass reporting him missing on February 17, 2018?

A: On May 16, 2017, an officer with the Wichita Police Department was dispatched to a residence in Wichita where Emily Glass lived with Jonathan and Lucas Hernandez. The calling party said that a tenant of another apartment in the area described being concerned that Lucas had been abused but could provide no details “or specific reason” why they thought so. The officer made contact with Lucas and saw a bruise, which was documented. Ms. Glass explained that Lucas was her “step son” and that the child’s father, Jonathan, was out of town. Ms. Glass explained that any bruises Lucas had would have must have been received from playing around the house or with other kids. The officer attempted but was unable to reach the calling party. No additional information was provided to the officer.

Q2: Why was Ms. Glass released from custody rather than being charged on the May 29, 2018 after Lucas’s body was recovered in Harvey County on May 25, 2018?

A: Given the state of decomposition of Lucas’s body, no obvious signs of trauma were immediately discernable to investigators at the scene. The autopsy was then conducted the day after Lucas was located. The provisional findings from the autopsy revealed no obvious signs of skeletal trauma. No cause of death could be established at that time without additional forensic analysis, specifically toxicological testing, to determine whether drugs may have contributed to Lucas’ death.

In *any* situation, in order to file homicide charges, probable cause must exist to establish “*the killing of a human being.*” The surrounding facts then determine whether the killing was done intentionally, knowingly or recklessly. But the threshold determination that the person was killed requires evidence to establish that the death was not an accident or the result of some natural occurrence.

Kansas law does not allow the state to hold someone indefinitely while awaiting a cause of death determination. **Kansas Statutes Annotated** 22-2901(a) states that if an arrest is made the person arrested “*shall be taken without unnecessary delay before the nearest available magistrate and a complaint shall be filed forthwith.*” A “complaint” is the charging document. Meaning, under Kansas law, if a person has been arrested, they must be charged and brought before a judge “*without unnecessary delay.*”

The Supreme Court of the United States defined what is meant by “unreasonable/unnecessary delay” in County of Riverside v. McLaughlin, 500 U.S. 44, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991):

“The Court ruled the Fourth Amendment required prompt judicial determination of probable cause following a warrantless arrest which should not be longer than 48 hours, excluding weekends and holidays. The ‘without unnecessary delay’ concept has been adopted in Kansas.” State v. Cuchy, 270 Kan. 763, 767 (2001).

Q3: Why wasn’t Ms. Glass charged with disposal of a body to hold her in custody until the toxicology results were complete?

A: First, there is one crime that would generally apply to this type of situation:

K.S.A. 21-5938 defines the crime of, **“Failure to Report the Death of A Child,”** which reads, *“(b) (1) Failure to report the death of a child is knowingly failing to promptly report the death of a child to a law enforcement officer, law enforcement agency or state investigative agency, with the intent to conceal the commission of a crime, other than a violation of this subsection, by a: (A) Parent, legal guardian or caretaker; . . .”*

As set forth above, though, to prove the commission of this crime, the state has to be able to establish that the act was committed *“with the intent to conceal the commission of a crime, . . .”* and be able to identify the crime that was being concealed.

The only other criminal statute associated with the handling of deceased bodies is **Criminal Desecration**, K.S.A. 21-6205, which concerns *“obtaining unauthorized control of a dead body or remains of any human being.”* This would apply to what might be commonly understood as grave robbing.

Second, if she has been charged with interference with law enforcement for having

lied to law enforcement concerning what happened to Lucas, she would have had the ability to come into court and plead to that lesser charge and effectively prevent the charge from pursuing more serious charges later pursuant to a double jeopardy claim, because multiple punishments for a single offense are prohibited by the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and by § 10 of the Kansas Constitution Bill of Rights.

“If the charges arise from the same act or transaction, the conduct is unitary and the second component must be analyzed to see if the convictions arise from the same offense.” State v. Fisher, 283 Kan. 272, 312 (2007).

Q4: Would Emily Glass have been charged with a crime arising from the death of Lucas Hernandez?

A: The pathologist’s final autopsy report was made public by the Sedgwick County Regional Forensic Science Center on June 27, 2018. The autopsy observed that X rays showed “*no obvious skeletal trauma*” and the ability to examine the soft tissue was limited, due in part to the “*advanced decomposition*” of Lucas’ body.

The pathologist concluded: “circumstances of death, medical history, toxicological studies and forensic anthropology examination did not reveal a definitive cause of death.”

With no cause of death, the Office of the District Attorney would have continued to work with investigators to examine every contact between any member of the public, family, friends, associates, school personnel and state agents with Lucas Hernandez and/or Emily Glass. The goal would have been to determine whether

sufficient circumstantial evidence could be gathered to establish the charge of Felony Murder pursuant to K.S.A. 21-5402 with the underlying “inherently dangerous” felony of either abuse of a child under §(G) or aggravated endangering a child under §(S) of the same statute.

Additionally, crimes not related to homicide would have been considered, including:

I. K.S.A. 21-5938. Failure to report disappearance or death of child:

(a) Failure to report the disappearance of a child is knowingly failing to report to a law enforcement officer, law enforcement agency or state investigative agency, as soon as practically possible, the disappearance of a child under the age of 13 by a parent, legal guardian or caretaker when:

- (1) Such person knows or reasonably should know that such child has been missing, with the intent to conceal the commission of a crime, other than a violation of this subsection; or
- (2) such person knows that such child is missing and has reason to believe that such child is in imminent danger of death or great bodily harm.

(b) (1) Failure to report the death of a child is knowingly failing to promptly report the death of a child to a law enforcement officer, law enforcement agency or state investigative agency, with the intent to conceal the commission of a crime, other than a violation of this subsection, by a:

(A) Parent, legal guardian or caretaker; or

(B) person required to make a report as provided in subsection (a) of K.S.A. 38-2223, and amendments thereto, unless such person is a parent, legal guardian or caretaker.

(2) The provisions of this subsection shall not apply when the child's death has been reported by another person or is otherwise known by a law enforcement officer, law enforcement agency or state investigative agency.

(c) (1) Failure to report the disappearance of a child is a severity level 8, nonperson felony.

(2) Failure to report the death of a child as defined in:

(A) Subsection (b)(1)(A) is a severity level 8, nonperson felony; and

(B) subsection (b)(1)(B) is a class B nonperson misdemeanor.

(d) As used in this section, "caretaker" means a person 16 years of age or older that had willfully assumed responsibility for the care of a child at the time of the child's disappearance or death.

II. K.S.A. 21-5904a. Interference with law enforcement.

(a) Interference with law enforcement is:

(1) Falsely reporting to a law enforcement officer, law enforcement agency or state investigative agency that a crime has been committed or any information concerning a crime or suspected crime, knowing that such information is false and intending that the officer or agency shall act in reliance upon such information;

(2) falsely reporting to a law enforcement officer, law enforcement agency or state investigative

agency any information concerning the death, disappearance or potential death or disappearance of a child under the age of 13, knowing that such information is false and intending that the officer or agency shall act in reliance upon such information; or

(A) Severity level 9, nonperson felony in the case of a felony, or resulting from parole or any authorized disposition for a felony; and

III. 21-5409. Interference with parental custody; aggravated interference with parental custody.

(a) Interference with parental custody is taking or enticing away any child under the age of 16 years with the intent to detain or conceal such child from the child's parent, guardian or other person having the lawful charge of such child.

(b) Aggravated interference with parental custody is:

(1) Hiring someone to commit the crime of interference with parental custody, as defined in subsection (a); or

(2) the commission of interference with parental custody, as defined in subsection (a), by a person who:

(A) Has previously been convicted of the crime;

(B) commits the crime for hire;

(C) takes the child outside the state without the consent of either the person having custody or the court;

(D) after lawfully taking the child outside the state while exercising visitation rights or parenting time, refuses to return the child at the expiration of that time;

(E) at the expiration of the exercise of any visitation rights or parenting time outside the state, refuses to return or impedes the return of the child; or

(F) detains or conceals the child in an unknown place, whether inside or outside the state.

(c) (1) Interference with parental custody is a:

(A) Severity level 10, person felony, except as provided in subsection (c)(1)(B); and

(B) class A person misdemeanor, if the defendant is a parent entitled to joint custody of the child either on the basis of a court order or by virtue of the absence of a court order.

(2) Aggravated interference with parental custody is a severity level 7, person felony.

(d) It is not a defense to a prosecution under subsection (a) that the defendant is a parent entitled to joint custody of the child either on the basis of a court order or by virtue of the absence of a court order.

Ms. Glass remains the only suspect with potential criminal liability as to the death of Lucas Hernandez. As has been widely reported, Ms. Glass took her own life on June 8, 2018. As was detailed in the WPD release today, there is no evidence to suggest the role of any other individuals in the death of Ms. Glass. The coroner determined that her death was a suicide.

In light of the death of the sole suspect in the death of Lucas Hernandez, no charges will be filed concerning his death in February of 2018.