NOT DESIGNATED FOR PUBLICATION

No. 125,455

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellant,

v.

MATTHEW MUNOZ,
Appellee.

MEMORANDUM OPINION

Appeal from McPherson District Court; JASON R. LANE. Opinion filed September 29, 2023. Reversed and remanded with directions.

Steven J. Obermeier, assistant solicitor general, *Derek Schmidt*, former attorney general, and *Kris W. Kobach*, attorney general, for appellant.

Patrick H. Dunn, of Kansas Appellate Defender Office, for appellee.

Before SCHROEDER, P.J., MALONE, J., and MARY E. CHRISTOPHER, S.J.

PER CURIAM: The State appeals the district court's dismissal of one count of theft against Matthew Munoz. The district court found that Munoz had substantially complied with the Mandatory Disposition of Detainers Act (MDDA), K.S.A. 2022 Supp. 22-4301 et seq., and that the State had exceeded the 180-day time limit to bring Munoz' case to trial. The State claims the MDDA does not apply here because the record does not show that Munoz was in the custody of the Secretary of Corrections when he filed his MDDA request. The State also claims that Munoz did not substantially comply with the MDDA because he did not mail a copy of his request to the McPherson County Attorney or the

Secretary of Corrections and because the request did not contain essential information required by statute. Munoz disagrees with each of the State's claims and argues that the State has unclean hands. For reasons we will explain below, we agree with the State's claims and reverse and remand with directions to reinstate the theft charge.

FACTS

On September 15, 2020, the State charged Munoz with one count of theft in McPherson County. At that time, Munoz was incarcerated in the Mitchell County Jail on other charges. On November 10, 2020, Munoz mailed a writ to the clerk of the district court titled "Motion 180 Writ Callback" that requested the State to proceed with the prosecution of the newly initiated McPherson County case. Munoz did not mail the writ to the McPherson County Attorney or to the Secretary of Corrections.

Munoz was eventually transported to McPherson County to face the theft charge, and the case proceeded through a preliminary hearing. On July 18, 2022, Munoz moved to dismiss the case under the MDDA because the theft charge had not been brought to trial within the 180-day deadline. At a hearing on the motion, Munoz testified that he was being held in the Mitchell County Jail on local charges when he received the warrant for the theft charge in McPherson County. Munoz testified that he also was being held on a Kansas Department of Corrections (KDOC) warrant for what he described as parole violations. Munoz stated that he was served with the KDOC warrant at some point after he was booked into the Mitchell County Jail but did not give a more specific time. When asked whether the KDOC warrant was served on him before or after he filed his MDDA writ, Munoz stated that he filed his writ on the same day that he received the warrant from McPherson County. The KDOC warrant is not included in the record on appeal.

Munoz also testified that after he mailed his writ to the McPherson County District Court, the McPherson County Attorney's Office responded with a letter stating it had

received the writ. The letter explained that once Munoz was transferred from Mitchell County to the KDOC, he would be transported to McPherson County to face the theft charge. Munoz did not have the letter from the county attorney's office at the hearing, it was not entered into evidence, and it is not part of the record on appeal.

After hearing Munoz' testimony and arguments from counsel, the district court ruled from the bench and granted the motion to dismiss. The district court noted that for much of the relevant period, the MDDA deadlines were suspended due to COVID, but the deadlines were reinstated on August 2, 2021. The district court found that from August 2, 2021, to April 11, 2022, the date Munoz requested his first trial continuance, was 225 days which exceeded the deadline. The district court found that Munoz' writ and method of service substantially complied with the MDDA and pointed to the evidence that the county attorney received electronic notice of the filing and responded to the writ. The district court later filed a written order reiterating its findings and dismissing the theft charge with prejudice. The State timely appealed the district court's judgment.

DID THE DISTRICT COURT ERR IN DISMISSING THE CASE UNDER THE MDDA?

The State claims the district court erred in dismissing the theft charge with prejudice for the State's failure to bring the charge to trial within 180 days under the MDDA. The State claims the MDDA does not apply here because the record does not show that Munoz was in the custody of the Secretary of Corrections when he filed his MDDA request. The State also claims that Munoz did not substantially comply with the MDDA because he did not mail a copy of his request to the McPherson County Attorney or to the Secretary of Corrections and because the request did not contain essential information required by statute. Munoz disagrees with each of the State's claims and argues that the State has unclean hands to contest Munoz' motion to dismiss.

The district court held an evidentiary hearing on Munoz' motion to dismiss and made findings of fact and conclusions of law in granting the motion. Appellate courts review the district court's factual findings on a defendant's right to a speedy trial for substantial competent evidence. *State v. Owens*, 310 Kan. 865, 868, 451 P.3d 467 (2019). Substantial competent evidence refers to legal and relevant evidence that a reasonable person could accept as adequate to support a conclusion. *State v. Smith*, 312 Kan. 876, 887, 482 P.3d 586 (2021). Based on those factual findings, or if the material facts are not in dispute, an appellate court has unlimited review over the interpretation and application of the MDDA. *State v. Griffin*, 312 Kan. 716, 720, 479 P.3d 937 (2021).

The MDDA provides an intrastate procedure for persons incarcerated in Kansas penal or correctional institutions to request final disposition of other criminal charges pending within the state. *Griffin*, 312 Kan. at 720. The Act was previously called the Uniform Mandatory Disposition of Detainers Act or UMDDA, but in 2016 the name of the Act was changed to the Mandatory Disposition of Detainers Act or MDDA. See K.S.A. 2022 Supp. 22-4308. We observe that some appellate opinions issued after 2016 continue to refer to the Act as the UMDDA even though the Act was renamed the MDDA by statutory amendment in 2016. K.S.A. 2022 Supp. 22-4301(a) provides:

> "Any inmate *in the custody of the secretary of corrections* may request final disposition of any untried indictment, information, motion to revoke probation or complaint pending against such person in this state. The request shall be in writing, addressed and delivered to the court in which the indictment, information, motion to revoke probation or complaint is pending, to the county attorney charged with the duty of prosecuting it and to the secretary of corrections. Such request shall set forth the place of imprisonment." (Emphasis added.)

The inmate bears the burden to satisfy the requirements of K.S.A. 2022 Supp. 22-4301(a). See *State v. Burnett*, 297 Kan. 447, 455, 301 P.3d 698 (2013). Substantial compliance can invoke the protections of the MDDA. *Burnett*, 297 Kan. at 453.

Upon receipt of a request made under K.S.A. 2022 Supp. 22-4301, the Secretary of Corrections shall promptly:

> "(a) Certify the term of commitment under which the inmate is being held, the time already served on the sentence, the time remaining to be served, the good time earned, the time of parole eligibility of the inmate, and any decision of the prisoner review board relating to the inmate;
>
> "(b) for crimes committed on or after July 1, 1993, certify the length of time served on the prison portion of the sentence, any good time earned and the projected release date for the commencement of the postrelease supervision term; and
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> "(c) send by registered or certified mail, return receipt requested, one copy of the request and certificate to the court and one copy to the county attorney to whom it is addressed." K.S.A. 2022 Supp. 22-4302.

The Secretary of Corrections bears the burden to satisfy K.S.A. 2022 Supp. 22-4302. See *Burnett*, 297 Kan. at 455 ("[O]nce the prisoner complied with the UMDDA, the burden of properly delivering that request along with the certification was on the officials having custody of the prisoner."). Following receipt by the court and the county attorney of the certification from the Secretary of Corrections, a complaint generally must be brought to trial within 180 days or within such additional time as the court for good cause shown in open court may grant. K.S.A. 2022 Supp. 22-4303(b)(1). If this deadline is not met, the district court loses jurisdiction over the untried charge. *Griffin*, 312 Kan. at 722.

Was Munoz in the custody of the Secretary of Corrections when he filed his writ?

The MDDA applies only to inmates in the custody of the Secretary of Corrections. K.S.A. 2022 Supp. 22-4301(a). The State argues that Munoz was not in the custody of the Secretary of Corrections when he filed his writ because he did so while detained in the Mitchell County Jail. Munoz counters that, while incarcerated in the Mitchell County

Jail, he was served a KDOC warrant for a postrelease supervision violation and was therefore in the custody of the Secretary of Corrections when he filed his writ.

The State argues that Munoz should be judicially estopped from now arguing that he was in KDOC custody while in the Mitchell County Jail because he argued in district court that he did not need to be in KDOC custody for the MDDA to apply. A court may apply judicial estoppel to preclude a party from prevailing on one position, but then taking a contrary position later to gain advantage over an adverse party. *State v. Hargrove*, 48 Kan. App. 2d 522, 548-49, 293 P.3d 787 (2013). The State is correct that Munoz argued in district court that he did not need to be in KDOC custody for the MDDA to apply. But he also argued in district court that he was in KDOC custody while in the Mitchell County Jail. In his motion to dismiss, Munoz claimed that he filed his writ "while in custody in the Mitchell County Jail but being held on a detainer for the Kansas Department of Corrections." Because the record shows that Munoz is not taking an inconsistent position on appeal, judicial estoppel does not apply.

Turning to the merits, Munoz relies on *Burnett* to show that the KDOC warrant served upon him while in the Mitchell County Jail rendered him in KDOC custody. In that case, Burnett was an inmate in the McPherson County Jail when he filed a UMDDA request. At the time of the request, Burnett had been sentenced to imprisonment but had not yet been physically delivered into KDOC custody. Instead, he was being held in the McPherson County Jail while awaiting the disposition of a separate matter. The Kansas Supreme Court found that because the district court's sentencing and transportation order placed Burnett into KDOC custody, Burnett was in KDOC custody even though he was physically detained in the McPherson County Jail. *Burnett*, 297 Kan. at 456.

Munoz argues that his warrant from the KDOC has the same effect as the sentencing order in *Burnett*—even though Munoz was physically detained in the Mitchell County Jail, the KDOC warrant placed him in KDOC custody. Munoz does not cite the

record in support of his argument, and the KDOC warrant is not included in the record on appeal. Instead, Munoz cites to the appendix of his brief where he attached a copy of the journal entry of judgment in his Mitchell County case. That appendix is not part of the appellate record. See *State v. Warren*, 302 Kan. 601, 614, 356 P.3d 396 (2015) ("'The court will not consider appended items which are not found in the appeal record.'").

Even so, a review of the record shows that Munoz testified to being held in Mitchell County on a KDOC warrant for what he called a parole violation. The full testimony on the matter follows:

> "[DEFENDANT'S COUNSEL:] And while you were in Mitchell County Jail what were you being held on?
> "[MUNOZ:] I was being held on a theft.
> "[DEFENDANT'S COUNSEL:] And where was that theft at?
> "[MUNOZ:] In Mitchell County.
> "[DEFENDANT'S COUNSEL:] Were you being held on anything else that you recall?
> "[MUNOZ:] No, I don't think so.
> "[DEFENDANT'S COUNSEL:] Any holds on a DOC warrant at that time?
> "[MUNOZ:] Oh yeah, I had a parole too as well.
> "[DEFENDANT'S COUNSEL:] And did they serve that warrant to you while you were in custody?
> "[MUNOZ:] Yeah.
> "[DEFENDANT'S COUNSEL:] Do you recall whether or not that warrant was served when you entered the Mitchell County Jail or sometime afterwards?
> "[MUNOZ:] It was after.
> "[DEFENDANT'S COUNSEL:] Was it before you filed your writ to be brought back on a 180-day retainer?
> "[MUNOZ:] I filed the writ the same day that I got the warrant from McPherson County.
> . . . .
> "[DEFENDANT'S COUNSEL:] And what were you transported to the Department of Corrections for?

"[MUNOZ:] For criminal damage to property, and then I served out my parole sentence as well, which is nine months.

"[DEFENDANT'S COUNSEL:] Okay. So you serve the nine-month parole sentence?

"[MUNOZ:] Yeah, plus 16 months.

"[DEFENDANT'S COUNSEL:] And that was the sentence you were being held on while in Mitchell County Jail?

"[MUNOZ:] Yeah.

"[DEFENDANT'S COUNSEL:] And sentenced, and that was what the warrant was for that was served upon you?

"[MUNOZ:] Yeah."

We take no issue with Munoz' claim that he was in the custody of the Secretary of Corrections once he was served with the KDOC warrant for a postrelease supervision violation. The problem with Munoz' argument is that nothing in the record shows *when* he was served with the KDOC warrant and whether it was before or after he filed his MDDA request. The only evidence on the timeline of the warrant is Munoz' testimony that it was served on him sometime after he was booked into the Mitchell County Jail. Even when directly asked whether the KDOC warrant was served before he filed his writ, Munoz responded that he filed his writ on the same day that he was served the warrant for theft in McPherson County, which is entirely different from the alleged KDOC warrant. Even if this court considers, as Munoz suggests, the appendix to his brief as part of the record, nothing in the journal entry of judgment in his Mitchell County case shows that Munoz was under KDOC custody when he filed his MDDA request.

In sum, there is nothing in the record showing that a warrant placing Munoz in KDOC custody was served on him before he filed his MDDA request. The MDDA only applies to an "inmate in the custody of the secretary of corrections." K.S.A. 2022 Supp. 22-4301(a). The inmate bears the burden to satisfy the requirements of K.S.A. 2022 Supp. 22-4301(a). *Burnett*, 297 Kan. at 455. Munoz fails to show that he satisfied the threshold requirement for the MDDA to apply. For this reason alone, the district court

erred in dismissing the case for the State's failure to bring Munoz to trial within the deadline under the MDDA. Although we could end our analysis here, we also will address the State's claim that Munoz failed to substantially comply with the MDDA.

Did Munoz substantially comply with the MDDA?

The State claims that even if Munoz were in the custody of the Secretary of Corrections when he filed his MDDA request, he failed to substantially comply with the Act because (1) he did not mail a copy of his MDDA request to the McPherson County Attorney or to the Secretary of Corrections and (2) the request did not contain essential information required by statute. As a result, the State argues that the district court erred in dismissing the case for failing to meet the deadline under the MDDA.

Under the MDDA, the inmate must send a copy of his written request to the district court, the county attorney prosecuting the case, and the Secretary of Corrections. K.S.A. 2022 Supp. 22-4301(a). Munoz does not dispute that he failed to strictly comply with the statute. But Munoz points out that substantial compliance can invoke the protections of the MDDA. *Burnett*, 297 Kan. at 453. The State argues that Munoz' failure to mail his MDDA request to the McPherson County Attorney and to the Secretary of Corrections does not amount to substantial compliance with the Act.

The State cites *Griffin* to support its claim. Griffin filed his MDDA request on June 27, 2018. The KDOC, in accordance with its duties under the Act, then filed the requisite certificates with the district court and county attorney on July 18, 2018. The deadline for Griffin's trial was January 14, 2019, based on the 180-day clock starting on July 18, 2018, when the district court and the county attorney received the KDOC certifications. Trial was set for January 7, 2019, which was timely if the clock started on July 18, 2018, but beyond 180-days if the clock started on June 27, 2018, when Griffin first filed his MDDA request. Based on those facts, the Kansas Supreme Court addressed

the issue of when the clock starts upon an inmate's substantial compliance with the MDDA. *Griffin*, 312 Kan. at 719-20.

The *Griffin* court found that the clock starts upon receipt of the Secretary of Correction's certifications under K.S.A. 2019 Supp. 22-4302. 312 Kan. at 725. In reaching that conclusion, the court made several findings relevant to this appeal. First, the court found that the MDDA was a two-part statute where the inmate first bears the burden to substantially comply with their obligations of sending a written request to the district court, the county attorney, and the Secretary of Corrections; then, the burden shifts to the Secretary of Corrections to issue its certification to the district court and county attorney. 312 Kan. at 721-23. Further, if the inmate fails to meet their own burden, compliance will not be excused without a showing by the inmate that the State engaged in '"affirmative wrongdoing.'" 312 Kan. at 723. Finally, the court found that a request "must flow through the Secretary of Corrections" and that "the UMDDA and its caselaw turn on both the inmate's actions and those of prison officials, and the statute controls absent some claim that prison officials thwarted the inmate's request by misfeasance or malfeasance." 312 Kan. at 721, 724.

Here, the State uses the language in *Griffin* to argue that because an MDDA request must go through the Secretary of Corrections, Munoz did not substantially comply due to his failure to send his writ to the Secretary of Corrections. Because the 180-day clock under the MDDA does not begin to run until the Secretary of Corrections mails its certification to the district court and the county attorney, the State argues that Munoz cannot substantially comply with the MDDA without first mailing his request to the Secretary of Corrections to get the process started. We agree. It cannot be said that Munoz substantially complied with the MDDA when he failed to mail his request for a hearing to the Secretary of Corrections so it could issue its certification to begin the 180-day deadline to hold a trial. Arguably, the 180-day trial deadline never began to run in Munoz' case because of his failure to mail his notice to the Secretary of Corrections.

Since *Griffin* was decided, this court has more explicitly found that "generally, an inmate does not substantially comply if the inmate fails to send a copy of the request to the parties required by the UMDDA." *State v. Clark*, No. 123,904, 2022 WL 333670, at *3 (Kan. App. 2022) (unpublished opinion). In *Clark*, the inmate did not send his MDDA request to anyone but still moved to dismiss, arguing that the State failed to transport him from prison and try him on charges in Wyandotte County within 180 days. In affirming the district court's denial of the motion to dismiss, this court reiterated that an MDDA request must flow through the Secretary of Corrections and the State cannot "'acquiesce'" to an MDDA request without the Secretary of Corrections' certifications because the State lacks authority to start the clock under the plain language of the statute and under *Griffin*. *Clark*, 2022 WL 333670, at *4.

Munoz and the district court rely on the unpublished decision, *State v. Eaton*, No. 122,031, 2020 WL 7409961, at *7 (Kan. App. 2020) (unpublished opinion), which was decided before *Griffin* and *Clark*, where a panel of this court found that an inmate had substantially complied with the MDDA even though he failed to mail his request to the county attorney or to the Secretary of Corrections. Instead, Eaton mailed his request only to the district court. The *Eaton* court found that the county attorney had actual notice of the MDDA request, and for that reason Eaton had substantially complied with the MDDA. 2020 WL 7409961, at *7. The *Eaton* panel based its decision on the ground that actual notice to the county attorney was "'important because receipt of [the MDDA request] [by the prosecutor] triggers the running of the 180 days to bring the inmate to trial." 2020 WL 7409961, at *6.

Eaton supports Munoz' position, but there are reasons we should not follow this decision. First, *Eaton* cites and relies on several unpublished opinions decided by this court before the 2016 amendments to the MDDA. More importantly, a year after *Eaton* was decided, *Griffin* overruled the rationale employed by the *Eaton* court by finding that it is district court's and county attorney's receipt of the certificate issued by the Secretary

of Corrections that starts the clock, not the receipt of the inmate's MDDA request. *Griffin*, 312 Kan. at 725. Thus, under *Griffin*, actual notice to the county attorney is no longer the critical element to start the clock. Indeed, *Clark* emphasized that the State has no power to carry out an MDDA request until the Secretary of Corrections issues its certification. *Clark*, 2022 WL 333670, at *4. In other words, even if the county attorney does have actual notice of an MDDA request, that office is neither bound nor able to act until receipt of the Secretary of Corrections' certification. We observe that there are no cases decided after *Griffin* and *Clark* supporting Munoz' position that actual notice to a county attorney results in substantial complies with the MDDA.

Munoz' case is also similar to *State v. Foster*, No. 117,118, 2018 WL 4039455, at *5-8 (Kan. App. 2018) (unpublished opinion). There, Foster, like Eaton and Munoz, sent an MDDA request only to the district court and not to the county attorney, the Secretary of Correction, or any other official having custody of him. This court found that *Foster* had not substantially complied with the MDDA where "Foster failed to deliver his request to the proper custodial official for the certification procedure as required by K.S.A. 22-4302." *Foster*, 2018 WL 4039455, at *8.

The *Foster* panel also addressed a significant sticking point for the district court in Munoz' case. The district court found that because of its e-filing notification system, the county attorney received notice of Munoz' request when it was filed and that excused his failure to send the request to the county attorney. Foster presented the same argument to support substantial compliance when he, like Munoz, only sent his written request to the district court. The *Foster* panel rejected that argument finding that "if an inmate's filing of a UMDDA request with the clerk's office constituted substantial compliance with the requirement to mail the notice to the county attorney, this would render the provisions of K.S.A. 2014 Supp. 22-4301(a) meaningless." *Foster*, 2018 WL 4039455, at *6.

The district court cited to *Foster* in its ruling from the bench and attempted to distinguish it by noting that nothing in *Foster* demonstrated that the county attorney had any notice of Foster's filing. The district court was mistaken. The *Foster* panel directly addressed whether notice by a court's filing system was sufficient to substantially comply with the MDDA and found that it was not because the plain language of the statute requires the inmate to mail the request. *Foster*, 2018 WL 4039455, at *6. Notice to the county attorney through a court's e-filing system does not absolve an inmate of the duty to send a written request through the mail. For these reasons, we are persuaded to follow the Kansas Supreme Court's binding precedent in *Griffin* and the analysis of this court's decisions in *Clark* and *Foster* and not the analysis of this court's decision in *Eaton*.

Munoz' unclean hands argument

Munoz also tries to place the burden of his substantial compliance on the State by arguing that the State should have informed him that he needed to mail his request to the county attorney and Secretary of Corrections. Munoz cites no authority showing that the State has an affirmative duty to coach an inmate through the MDDA requirements when that inmate has not requested assistance or questioned why his MDDA request is not moving forward. The argument is problematic where it is plainly Munoz' burden to first substantially comply with his portion of the MDDA before the Secretary of Corrections' burden begins. See *Griffin*, 312 Kan. at 723-24; *Burnett*, 297 Kan. at 454. Indeed, "it is the inmate's duty to ensure prison officials perform correctly in addressing the inmate's request under the UMDDA." *Griffin*, 312 Kan. at 723.

But Munoz argues that courts "have taken into account" whether a party has clean hands when deciding whether a defendant has complied with the MDDA. In *State v. Dolack*, 216 Kan. 622, 625, 533 P.2d 1282 (1975), Dolack sent a letter to the county attorney requesting a speedy trial. The county attorney responded with information about what Dolack must do to initiate his speedy trial rights under the Interstate Agreement on

Detainers (IAD), but Dolack did not act on that information. Kansas courts have held that because the MDDA and the IAD are parallel Acts with parallel purposes, cases under each serve as precedent for the other. *Sweat v. Darr*, 235 Kan. 570, 574, 684 P.2d 347 (1984). The Kansas Supreme Court considered the county attorney's response but found that Dolack had not substantially complied with the IAD because "it is incumbent upon an accused incarcerated in a penal institution to comply with all the provisions of the Act applicable to his incarceration, including the preparation of his written request for disposition of detainer to be addressed to [the proper parties]." *Dolack*, 216 Kan. at 634.

Ekis v. Darr, 217 Kan. 817, 818-19, 539 P.2d 16 (1975), has similar facts to *Dolack*. In *Ekis*, the inmate sent a letter to the county attorney requesting a speedy trial. As in *Dolack*, the county attorney responded with a letter stating that if the inmate complied with the IAD, his request would proceed. Yet the inmate did not act in response to that letter and did not attempt to comply with the IAD, so the *Ekis* court found that the inmate had not substantially complied. 217 Kan. at 826.

In *State v. Lomon*, No. 116,497, 2017 WL 1535229, at *4 (Kan. App. 2017) (unpublished opinion), this court found that Lomon substantially complied with the UMDDA by sending his pre-2016 UMDDA request to the correct prison officials having custody over him, but those officials failed to fulfill their own burden to send the proper certifications. As part of the process, Lomon inquired why no action was being taken, and he was told by prison officials that he needed to pay a fee. After noting that there was no statutory fee required under the UMDDA, this court stated, "there is certainly an obligation to provide a prisoner with accurate information when it is decided that prison officials do not feel there is an obligation to Act and in all events not create a barrier to a prisoner pursuing his legal options." 2017 WL 1535229, at *4.

Here, while the county attorney did respond to Munoz' request to the district court, it did not counsel Munoz on his failure to send his request to the Secretary of Corrections.

Instead, Munoz testified that the letter merely stated that the county attorney had received notice of the request, that it had been filed with the district court, and that Munoz would be transported to McPherson County after his sentencing in Mitchell County. The letter itself is not part of the record, and Munoz relies solely on his testimony as to the letter's contents. So, while there is substantial evidence in the record to support the district court's finding that the county attorney responded to Munoz' request, there is not substantial evidence, or any evidence at all, to support a finding that the county attorney gave, for example, inaccurate advice or information on which Munoz relied to his detriment. The record does not support Munoz' assertion on appeal that the State has unclean hands to contest the motion to dismiss under the MDDA.

In sum, it is undisputed that Munoz did not send his MDDA request to the Secretary of Corrections as required by statute. Sending his MDDA request to the proper parties is Munoz' burden to bear. See *Burnett*, 297 Kan. at 454. To excuse his lack of compliance with the MDDA, Munoz relies on older cases that are either factually or legally distinguishable under the more recently decided *Griffin* and *Clark*. The State is also correct that caselaw does not impose a duty on the county attorney to coach Munoz through his deficient MDDA request. For these reasons, we agree with the State that Munoz failed to substantially comply with the MDDA because he did not mail a copy of his request for a hearing to the McPherson County Attorney or to the Secretary of Corrections. We need not address the State's additional argument that Munoz failed to substantially comply with the MDDA because his request did not contain essential information required by statute. We reverse the district court's order granting Munoz' motion to dismiss and remand with directions to reinstate the theft charge.

Reversed and remanded with directions.