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OKLAHOMA CRIMINAL DEFENSE WEEKLY

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(with special thanks to Mark Hoover, OIDS, for contributing regularly)

“I have lived my life, and I have fought my battles, not against the weak and the poor—anybody can do that—but against power, against injustice, against oppression, and I have asked no odds from them, and I never shall.”---Clarence S. Darrow, *Attorney for the Damned* 491, 497 (Arthur Weinberg ed. 1957).

OKLAHOMA

[Washington v. State](#), 2023 OK CR 22 (December 21, 2023): **Standard of Review (Unpreserved Constitutional Errors); Evidence (Hearsay; Medical Examiner Report)**: Washington was convicted by jury in Oklahoma County (the Hon. Amy Palumbo, presiding) of Murder in the First Degree. He raised several issues on appeal, most of which were not preserved and thus subject to plain error review, including erroneous admission of the Medical Examiner’s report. The Court took this opportunity to modify its plain error analysis of unpreserved constitutional errors (in line with federal law) and thus no longer requires the State to show beyond a reasonable doubt that the error was harmless under *Chapman*, but rather now requires the accused to show prejudice. NOTE: Hudson, V.P.J., concurred specially, noting that other aspects of plain error review should be addressed in

future cases. Lumpkin, J., concurred specially, explicating his thoughts on plain error review.

[Kelly, III, v. State](#), 2023 OK CR 21 (December 21, 2023): ***Pro Se Representation***: Kelly was convicted by jury in Tulsa County (the Hon. Sharon K. Holmes, presiding) of Murder in the First Degree. The Court reversed on the basis that the district court denied Kelly his right of self-representation. NOTE: Lewis, J., concurred specially.

UNITED STATES SUPREME COURT

“Only Supreme Court justices and schoolchildren are expected to and do take the entire summer off.” –*Chief Justice John Roberts (statement made while he served as a lawyer in the Reagan Administration).*

No new cases.

On January 5, 2024, the Court granted certiorari in the case where the Colorado Supreme Court ruled that President Trump shall be stricken from the ballot for insurrection under the Fourteenth Amendment. The [DOCKET](#) in the Supreme Court is No. 23-719, and the Court has set oral arguments for Thursday, February 8, 2024. The pleadings are interesting and this appears to be a challenging legal issue for the Court.

VICTORIES

[BRECKEN WAGNER](#), McAlester, got a motion to quash granted in Pittsburg County for a client charged with Assault. Great job, Brecken!

HEARSAY

BODYCAMS: Some DOC correctional officers will wear bodycams by the end of January.

SECURITY: DOC is also looking at a system-wide revamping of security.

OD: Four inmates have overdosed at the Tulsa County Jail.

APPALLING CONDITIONS: **Rep. Justin Humphrey (R-Lane)** alleges that appalling things are happening in prison. **DOC** has responded. Also, Rep. Humphrey has taken on the **A.G. and the DAC** over alleged fraudulent use of probation fees. This representative is taking it to The Man.

ARDMORE: The City of Ardmore has a new interim Chief of Police.

TRAFFIC: The OKC PD has launched a new Traffic Safety Unit and is changing the way it conducts traffic stops.

RETIRED: A long-time Nichols Hills police officer has retired (with photo of the Volvo police cruiser).

CONTRABAND: DOC has implemented state-of-the-art technology to deal with inmate use of contraband cell phones.

SUSPENDED: The operating agreement/cross-deputization agreement between the Cherokee Lighthorse and the Grant River Dam Authority has been suspended, likely by Gov. Stitt.

SURVEILLANCE: The City of Chickasha will have video cameras at city-owned buildings.

PAROLE: The rate of recommendations for parole has dropped from 36% to 24% in Oklahoma. Also, a family is **suing** Gov. Stitt and the Pardon and Parole Board for commuting the sentence of a man who subsequently killed some relatives.

APPOINTED: Choctaw Nation Attorney (and former OIDS attorney) Cory Ortega has been selected as a Special Judge in Cleveland County.

BANNED: All soft-bound books are now banned at the Carter County Jail because inmates have been using them as tools.

APP: An OKC man has an interesting idea for an app called BlueJay for interaction with police officers.

DNA: A man is trying to exonerate himself in a 1991 rape case out of Tulsa.

JUVENILES: The Okmulgee County Jail may have held juveniles illegally.

NEW CHIEF: The City of Ada has named a new Chief of Police.

FIRST ASSISTANT: Eric Epplin has been named First Assistant by new District 4 District Attorney Tommy Humphries.

ALTERCATION: There has been an altercation between an Okmulgee Jail officer and a Muskogee Lighthouse officer. **HERE** is the Muskogee Nation's version of events.

TASK FORCE: Gov. Stitt has created a *McGirt* Task Force.

ENCRYPTION: The Tulsa P.D. has encrypted its radio transmissions so that the public can no longer listen.

ARRESTED: The Chief of Police in Chelsea (Rogers County) has been arrested for fraud.

STATS: The Tulsa P.D. says that the number of homicides in the city has been steadily decreasing.

CAMERAS: The City of Ardmore is getting cameras to find uninsured drivers.

WACKY CRIME

EDMOND: An Edmond woman led police on a “short, but eventful, chase” while driving an Edmond Public Schools maintenance truck that she had stolen.

RESPECT: Two men in Ottawa County threw Molotov cocktails at the Ottawa County Sheriff's Office because they felt “disrespected.”

LAWTON: “This is why I don't drink anymore,” said a drunk Lawton woman who had just crashed into a stopped police cruiser.

LAWTON II: A Lawton man blurted out to police, “I do drugs”...and it turned out that he was selling them, too.

CHRISTMAS: A man in a Santa hat tried to come through the front door rather than the chimney of an Edmond home on Christmas Day.

WASHINGTON COUNTY: A Washington County man has been charged with assaulting another man...with a bicycle frame.

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