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OKLAHOMA CRIMINAL DEFENSE WEEKLY

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[James L. Hankins,](#)
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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

[State v. Christopher McCuen Bowles](#), No. S-2024-284 (Okla. Cr., December 16, 2024) (unpublished): **Extraordinary Writ; Motion in Limine**: In a sex offense case out of Oklahoma County, the Hon. Amy Palumbo granted a defense motion in limine regarding the admission of evidence taken from the cell phone of the accused. The State announced intent to file a writ/appeal. In this Order, the Court dismissed the State’s appeal, concluding that motions in limine are not appealable orders. NOTE: [NonDoc](#) ran a story about a recent DAC meeting where there was a discussion of this Order that tended to be critical of the Court (a “ridiculous” order) and also of Judge Palumbo who was apparently referred to as a “moron.” Imagine being a prosecutor and complaining about the rulings of the Oklahoma Court of Criminal Appeals.

TENTH CIRCUIT

[United States v. Pascual A. Ruiz, Jr.](#), No. 23-3172 (10th Cir., January 14, 2025) (Published) (Hartz, Ebel & Rossman): **Plea Bargains:** Ruiz alleged that the prosecutor violated the plea agreement to recommend 51 months at sentencing, but the panel found there was no plain error.

[United States v. Wendy Dawn Johnson](#), No. 23-7047 (10th Cir., January 16, 2025) (Published) (Matheson, Kelly & Moritz) (E.D. Okla.): **Restitution:** Johnson pled guilty to Manslaughter in a drunk-driving accident. The Government sought lost income of the decedent as restitution. Johnson argued that this amount was zero because she would have personally consumed her income. The district court declined to deduct personal consumption from the restitution award. The panel concluded that the district court rejected the personal consumption deduction for a legally incorrect reason. Remanded to consider this issue and to reconsider the payment schedule.

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).

[Brenda Evers Andrew v. Tamika White](#), No. 23-6573 (U.S., January 21, 2025): **Burks Notice/Bad Acts:** This is a case out of Oklahoma where the Court reversed the denial of habeas relief in a capital case, construing the AEDPA “clearly established federal law” requirement as encompassing prejudicial evidence that results in a fundamentally unfair trial under the Fourteenth Amendment.

OTHER CASES OF NOTE

[United States v. Damion Xavier Giglio](#), No. 24-60047 (5th Cir., January 23, 2025): **Second Amendment:** This is an important Second Amendment challenge to a felon in possession of a firearm charge where the Fifth Circuit, applying *Bruen*, held that “our history demonstrates a tradition of disarming individuals serving criminal sentences” and thus the Government could regulate the use of firearms by Giglio consistent with the Second Amendment. The important fact was that Giglio was on supervised release and serving a sentence for a prior conviction.

[United States v. Nghia Le](#), No. 23-30888 (5th Cir., January 16, 2025): **Guilty Pleas:** Plea to maintaining premises for the purpose of manufacturing drugs is vacated as unsupported by the factual basis.

VICTORIES

[THE UNKNOWN LAWYER](#), Parts Unknown, secured a not guilty verdict at trial in what the media described as a deadly Choctaw Casino parking garage stabbing. [HERE](#) is another story on it showing the verdict form listing Bryan County case number CF-2024-186, but for some reason we cannot find this case on-line and thus the lawyer. If anyone knows who did this good job of trial advocacy, tell him/her congratulations!

MIRANDA SNODGRASS & KRISTIN KNUTSON as second chair, secured a not guilty verdict in Tulsa County at jury trial where the client was charged with Domestic A&B by Strangulation, which happens to be Miranda’s second violent felony not guilty verdict in the last six months. She got four of the six counts kicked with motion practice on the morning of trial and won the rest with skillful cross-examination (with the judge demurring out one count). Great job, Miranda and Kristin!

ROBERT L. WYATT, IV, and CLINTO JAMES, OKC, secured a very impressive win in the Western District that resulted in a full acquittal of 26 counts of a “pill diversion” case tried to a jury before Judge DeGiusti in *United States v. Wellhausen*, CR-23-496-D.

[LAURA NEAL and SAMMY DUNCAN](#), OKC, secured a not guilty verdict in the Western District in a drug case that resulted in a fentanyl death. The client was found guilty of the lesser count which was admitted in the opening and closing. Nice work, Laura and Sammy!

OKLAHOMA COUNTY: MIKE JOHNSON, OKC, got a not guilty verdict in a murder case in Oklahoma County. Great work, Mike! **JOI MISKEL** got an acquittal in a Murder II case, and an **unknown public defender** also got a not guilty verdict in a felony case. Excellent work in the capital!

SHENA BURGESS, Tulsa, got a not guilty verdict in the Eastern District. No details on this, but congratulations Shena!

BRECKEN WAGNER, McAlester, secured a not guilty verdict for his client in McCurtain County. Not many details, but jurors said that he did a great job exposing the terrible investigation by the State. Nice work, Brecken!

HEARSAY

FINANCES: An inmate at James Crabtree Correctional Center told law enforcement that his wife tried to bring drugs into the prison for him to sell because they were having financial difficulties.

NEW CHIEF: The Choctaw Nation has a new Chief of Police.

VISITS: Lawton Correctional Facility has cancelled all visitation until further notice.

BUDGET: State Rep. Justin Humphrey questions the budget request of the Department of Corrections.

ARRESTED: A critic of the Cleveland County Sheriff has been arrested, possibly doxing the Sheriff.

EXECUTION: Attorney General Drummond has sought transfer of John Hanson to Oklahoma for execution.

SEARCHED: An OSU student has claimed that she was arrested unlawfully and strip-searched.

BILLS: Oklahoma Watch looks at some criminal justice bills filed in the Legislature.

STEPPING DOWN: OSBI Director Angela Spurlock is retiring effective March 1.

ARRESTED: Tulsa police have arrested a man believed to have broken into the courthouse one night earlier this month.

APPOINTED: The Choctaw Nation has appointed Micah Knight as its first woman to its appellate court.

REDUCED: Tracy Schumacher represented a woman charged with felony Manslaughter and it has been reduced to misdemeanor negligent homicide. Good result, Tracy!

SERVICE: Service Oklahoma celebrates its accomplishments for 2024.

INCARCERATION: First Lady Sarah Stitt commented on the high incarceration rate in Oklahoma. Oklahoma **ranks fourth** in incarceration rates.

PAROLE: The Pardon and Parole Board has recommended parole for Wayne Thompson who was a teen at the time he killed his sister's abusive ex-husband.

SETTLEMENT: The Cherokee Nation has reached an \$80 million settlement with the federal government and proposes to build a new judicial center in Tahlequah as well as future courthouse at an as of yet disclosed location.

CONSENT: State Rep. Jim Olsen has re-introduced a bill which would raise the age of consent from 16 to 18. He also introduced a **bill** to lower the age to carry a gun from 21 to 18. A separate bill by a different legislator would invalidate **licenses** to illegal immigrants issued by other states.

DRIVING: OHP will devote the last two weeks of January to enforcing distracted driver laws.

DENIED: The request for a commutation by Jerome Ersland has been denied.

DEATH: DOC death row inmate Byron Shepard has died in prison from natural causes.

WACKY CRIME

SHAWNEE: A man injured himself as he vented his frustration on a slot machine when it malfunctioned.

THE VILLAGE: Police in The Village de-escalated a fight...between a wiener dog and an opossum.

CASH: A couple has been arrested for robbing a man of \$67,000.00 in cash...that the man had brought into a strip club.

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