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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

[Cash v. State](#), 2024 OK CR 1 (January 25, 2024): **Suspended Sentences:** In this revocation case out of Cleveland County, the State alleged technical violations (failure to report, remain in the state, and failure to pay costs) as well as a new crime of rape that allegedly occurred in Arkansas. The Hon. Lori Walkley revoked in full. The Court affirmed over claims relating to: 1) error for revocation of the technical violations because his rules of probation did not contain them (no plain error since a handwritten addendum indicated transfer of probation to Arkansas); 2) revocation in full for technical violation of failure to report; 3) use of the rape because he was acquitted of that conduct and a conviction for sexual assault was overturned on appeal (as odd as it sounds, acquittal does not bar revocation); 4) admission of the Arkansas transcript as hearsay (it is hearsay, but the Court

distinguished cases like this one where the accused had a prior opportunity to confront).

Timothy Ryan Bowie v. State, No. F-2021-371 (Okl.Cr., January 25, 2024) (unpublished): **Jury Instructions (Unanimous Verdict)**: Bowie was convicted in Oklahoma County (the Hon. Richard W. Kirby, presiding) of Murder in the Second Degree. The Court affirmed but there was an issue where the jury was not instructed that the verdict had to be unanimous. The Court remanded for an evidentiary hearing at which all the jurors testified that the verdict was unanimous, so no prejudicial error.

James Jetton Fletcher, III, v. State, No. F-2021-1319 (Okl.Cr., January 25, 2024) (unpublished): **Search and Seizure (Traffic Stops/Profiling)**: Fletcher was convicted by jury in Canadian County of Trafficking and Conspiracy (the Hon. Paul Hesse, presiding). He moved to suppress the evidence from the traffic stop based on racial profiling. The Court rejected this claim on several bases, but also noted that the authority is that the Exclusionary Rule does not apply to Equal Protection claims. In addition, Fletcher sought to argue these grounds to the jury, but the Court held that these are legal issues for the trial court and not elements of the crime. NOTE: There is a statute that criminalizes racial profiling by law enforcement at 22 O.S. section 34.3.

Nia Malika Gaddis v. State, No. F-2022-78 (Okl.Cr., January 25, 2024) (unpublished): **Evidence (Privileges; Attorney/Clergy)**: Gaddis was convicted by jury of Murder in the First Degree (the Hon. Sharon Holmes, presiding). The Court affirmed but addressed issues regarding admission of statements by Gaddis to an attorney and a pastor at the police station on the grounds that there is no reasonable expectation of privacy between a client and a pastor at a jail, police station or police car.

TENTH CIRCUIT

[United States v. Pamela Kathryn Conley](#), No. 22-5112 (10th Cir., December 22, 2023) (Published) (Matheson, Phillips & Moritz) (N.D. Okla., Hon. John F. Heil, III, C.J.): **Guilty Plea: Federal Sentencing Guidelines (Loss Calculation)**: Conley pled guilty to bank fraud and identity theft. On appeal, she challenged the Guidelines range for bank fraud, and argued that in light of *Dubin v. United States*, 599 U.S. 110 (2023), the district court erred plainly in accepting her plea to

identity theft. The panel affirmed the plea to identity theft, but vacated the sentence for bank fraud based on improper loss calculation.

[United States v. Domingo Martinez, Jr.](#), No. 22-1167 (10th Cir., December 20, 2023) (Published) (Eid, Seymour & Kelly): **Evidence (Drug Jargon); Trial Procedure:** Drug convictions are affirmed over claims (plain error) related to: 1) admission of narcotics detective's testimony about Santa Muerte shrines (also a First Amendment Claim); and 2) a robocall inadvertently played during trial which the jury was instructed to disregard (the call played on courtroom speakers and warned that criminals were seeking to defund police and soliciting public support; the judge had no idea how this happened or the source of the call).

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.

OTHER CASES OF NOTE

United States v. Anonymous Appellant, No. 22-1597 (1st Cir., October 23, 2023): **Civil Commitment:** The Government may civilly commit a defendant after he serves his sentence upon meeting certain requirements. In this case, the panel affirmed the commitment, but I included it because it contains a good discussion of the law in this area.

United States v. Brent Brewbaker, No. 22-4544 (4th Cir., December 1, 2023): **Antitrust:** Denial of motion to dismiss antitrust count under the Sherman Act is reversed.

RIP ROBERT RAVITZ

Long time [Oklahoma County Public Defender Robert Ravitz](#) passed last week at the age of 71. He had been a fixture in that office for my entire legal career of 30 years. I remember Bob from my very first case (even before I had passed the Bar) because he represented the same client on appeal in a different county and we talked about legal strategy.

Over the years, he was one of the handful of lawyers that I would reach out to with problems or advice. He was a true fighter, a terrific administrator in a large office managing lawyers and judges in Oklahoma County, and a great lawyer. He will be [missed](#).

VICTORIES

[JOE WHITE](#), OKC, secured a nice trial win for a client charged with assaulting a student in Comanche County. Great job, Joe!

BRAD W. WICKER, Ponca City, who does mainly injury litigation heeded the call to represent a client who attended a birthday party and was asked to help put his girlfriend's daughter to sleep (13 years old) which ended up with an improper touching allegation. Phone contained some searches for child porn, which came in. The defense focused on the police investigation and the procedural protections for innocence, argued well by Brad because the jury returned a verdict of not guilty. Nice work, Brad!

KATHRYN GARDNER and **JACKLYNN HOPLIGHT**, Tulsa County P.D., secured a "not delinquent" verdict in a juvenile case where the client had been accused of three counts of sexual assault (alleged that one sibling had assaulted another). Family members testified, and when the complaining witness testified, prosecutors thought that they had won the case. The jury was out 4.5 hours. Terrific result, Kathryn & Jacklynn!

MALORIE MOTTINGER and **JACOB BENEDICT**, Oklahoma County P.D., secured a quick 30-minute not guilty verdict for a client in a misdemeanor DUI case. This is more impressive because the client, who admitted having two shots of Southern Comfort earlier in the evening, totally bombed the SFSTs and refused the test. However, the dash cam proved valuable because it showed no slurred speech and good driving. Great job, Malorie & Jacob!

DOUG PARR, OKC, one of the premier Search and Seizure lawyers in our state, has struck again with a suppression win out of Canadian County where Judge Hesse granted a motion to suppress of \$250,000.00 in cash (no drugs found). OHP Trooper involved was Eddie Fish. The case involved the Kansas-two-step situation where the stop was concluded and the Trooper asked more questions. Judge Hesse found no facts to support reasonable suspicion after the conclusion of the stop. Great work, Doug!

JOSH WELCH, OKC, secured a dismissal in what has been described as a crazy two-count SWIK case in Oklahoma County (the one near the parking garage by the courthouse). The juvenile client was a friend of the family. Despite video evidence and an offered outcome in juvenile court, the client held firm and so did Josh, resulting in dismissal at PH. Guess who's back? Back again? It's Josh Welch, tell a friend.

DUSTIN PHILLIPS, OKC, had a winnable Sex Crimes jury trial set for trial in Oklahoma County. DA had announced ready the week before, but showed up asking for a continuance because no subpoena had been issued for the complaining witness. Granted over objection. Dustin then announced ready in a second Sex Crimes case, which ended up resolved with an expungeable misdemeanor fine only. Good preparation gets good results. Good job, Dustin!

TOMMY ADLER, OKC, is at it again, this time representing an Edmond police officer charged with Lewd Acts for sexting with a niece. Only problem was that Tommy went through the texts and there was nothing. DA charged based on the allegations without ever actually checking. Case dismissed. Great job, Tommy!

ADAM BANNER, OKC, secured a good win right before the holidays in Blaine County for a client charged with two counts of Lewd Molestation u/16 with two complaining witnesses (neighbors). Client did not testify. Trial judge was Hon. Paul Woodward. Adam reported that Judge Woodward uses the 12 in the box for jury selection, but they ran through a 45-person panel, so he ordered individuals from the court administrator offices downstairs to come up for jury duty (the two alternates were from that group). Not guilty verdicts x2. Great work, Adam!

HEARSAY

RETIREMENT: An Oklahoma state senator wants to create a mandatory retirement age of 75 for judges.

EXECUTION: Lots of news about the execution in Alabama using nitrogen. Oklahoma was the first state to authorize nitrogen as a form of execution, but its implementation remains unclear.

DOC: There are ongoing concerns over infrastructure at DOC.

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

HIRED: The City of Tulsa has hired a “Chief Mental Health Officer” although it is unclear what her duties are.

APPOINTED: Gov. Stitt has appointed a new Associate District Judge in Jackson County, the **Hon. Sommer Robbins**.

APPOINTED II: Gov. Stitt has appointed Allie Friesen as the new commissioner of the Department of Mental Health.

CRIME: The Cherokee County, Kansas, Sheriff’s Office has spent \$30,000.00 on a device which shoots a laser beam to detect fentanyl.

ARRESTED: An Antlers police officer has been arrested for kidnapping.

DEATHS: There was a spike in deaths at the Comanche County Detention Center in 2023. Also, a **jailer** there lost a finger in a melee.

TABLETS: 80% of DOC inmates have tablets, but the jury is still out on the effectiveness of the program.

AUDITED: An audit of the Payne County Sheriff’s Office has uncovered questionable expenses.

HONORED: OKC has announced its 2023 Police Officer of the Year.

GRAHAM: The A.G. is appealing the ruling by the federal district court releasing Heather Graham who was serving a 107 year prison sentence in Tulsa County.

ODD SENTENCE: An Oklahoma County man received a mostly suspended sentence in a First Degree Murder case. The docket shows that the defense lawyer is Scott Anderson.

BURGLARY: A South American burglary ring may be operating in the OKC metro area.

LOOKING: Commissioners in Comanche County are looking for a new jail administrator.

SUPERFAN: A federal judge has ruled that the Kansas City “superfan” who robbed a credit union in Oklahoma will not be returned here to face trial.

TRAINING: The Payne County Sheriff’s Office is getting a new building for training.

UCO. The University of Central Oklahoma will offer a ticket forgiveness program for students.

YOUNG: A new Administrator at the Garfield County Jail is only 28-years-old.

SHIELDS: An organization has donated ballistic shields to all Rogers County law enforcement officers.

ARRESTED: The Afton, Oklahoma, fire Chief has been arrested for stealing a Rolex out of an impounded vehicle.

RELOCATION: DOC is relocating three Probation and Parole offices. DOC is also requesting a **flat budget** for FY 2025.

SWAP: An inmate at the Stephens County Jail obtained drugs from a visitor by swapping shoes with here.

SITE: County Commissioners in Oklahoma County have narrowed down the site for a new jail to three locations.

POTHOLES: There is apparently a holiday celebrating potholes...which was celebrated in Oklahoma City.

DRONES: Drones have been dropping colorful sex toys on rooftops in OKC.

TICKETS: The City of Oklahoma City is offering a year-long ticket “penalty reduction program” for old tickets.

WITHHELD: Rep. Justin Humphreys, in the news yet again, this time for claiming that District Attorney Jason Hicks withheld records pertaining to Richard Glossip’s clemency hearing.

WACKY CRIME

CADDO COUNTY: “I can’t take orders from this corrupt system!” said a Caddo County probationer who cut off his ankle monitor, left his mother a note, and then flew the coop.

PORN STAR: Porn star Jesse Jane and her boyfriend were found dead at a home in Moore, apparently from drug overdose.

ARRESTED: Four Oklahoma State Alpha Gamm Rho fraternity members have been arrested for shenanigans related to the longhorn carcass incident in Stillwater, and Mark asserts that the story has a Watergate-like twist.

TULSA: A Tulsa man committed robbery to obtain...purple ponytail hair extensions.

COPPER: Copper theft is so bad that thieves managed to topple the broadcasting antenna of a radio station in Choctaw County.

FURRIES: Rep. Justin Humphrey wants to ban “furries” in public schools.

CADDO: A “one-man demolition derby” happened in Caddo County.

TOLL: A teenage tried to beat the turnpike toll system for 88 cents...only to get a \$500.00 fine.

SWIFT: A Tulsa Swiftie has stolen a Taylor Swift poster from a movie theater.

ASSAULT: An OKC liquor store employee was assaulted with...a very expensive bottle of Tequila.

CONSPIRACY: Conspiracy theorists believe that the earthquakes in Edmond a few weeks ago were bomb detonations.

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