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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

[Rene Dorado Estrada v. State](#), No. F-2021-1389 (Okl.Cr., January 26, 2023) (unpublished): **Discovery**: Estrada was convicted by jury in Sequoyah County (the Hon. Matthew Orendorff, presiding) of Aggravated Trafficking. The State had an OSBI drug analysis report before trial, but the chemist was fired and could not testify, so the State had to get a new one (with the same positive result) but was only able to provide this new report four days prior to trial. The Court found no abuse of discretion because the State had been “diligent” and there was otherwise no surprise or prejudice to the accused. NOTE: I guess the 10-day deadline is advisory now.

[In Re Setting Execution Dates](#), No. D-2005-310 (Okla. Cr., January 24, 2023): The OCCA has set execution dates in seven capital cases. The Order includes a concurrence by Judge Lumpkin complaining about the timing.

SECOND AMENDMENT

[United States v. Zackey Rahimi](#), No. 21-110001 (5th Cir., February 2, 2023):

Second Amendment: In light of recent Supreme Court precedent in *N.Y. State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022), 18 U.S.C. 922(g)(8) which prohibits possession of a firearm by a person subject to a domestic violence restraining order is unconstitutional.

[United States v. Jared Michael Harrison](#), No. CR-22-328-PRW (W.D. Okla., February 3, 2023): **Second Amendment:** 18 U.S.C. 922(g)(3), which prohibits possession of a firearm by a marijuana user, is unconstitutional in a lengthy opinion and analysis similar to the *Rahimi* case where Judge Wyrick dismissed an indictment. NOTE: Supreme Court precedent on the Second Amendment is strong and it appears that the lower courts are taking it seriously instead of finding ways around it.

TENTH CIRCUIT

[United States v. Jane Doe](#), No. 23-9900 (10th Cir., January 20, 2023) (Published) (Tymkovich, Briscoe & Phillips): **Juveniles; Jurisdiction (Appellate; Ripeness):** Doe and two boys are accused of killing her parents. The Government charged her as an adult (she was 17 at the time of the murders) with First Degree Murder, and the punishment range is death or mandatory life imprisonment. Doe argues on appeal that she cannot be transferred to adult court because both of those sentencing options are unavailable to her under Supreme Court precedent, thus there is no statutory punishment for her. The panel found that the constitutional claim is not ripe for appellate review, and that the district court otherwise correctly transferred her to adult court. NOTE: Judge Briscoe concurred in part/dissented in part, agreeing that the constitutional claim was not ripe, but concluding that the district court had erred in the transfer determination.

[United States v. Joshua Leib](#), No. 21-2136 (10th Cir., January 18, 2023) (Published) (Carson, Ebel & Rossman): **Federal Sentencing Guidelines (Firearms):** 100-

month sentence for felon-in-possession of a firearm is affirmed over a claim that it was error to enhance for use of a firearm in connection with another felony.

[United States v. Germaine Coulter, Sr.](#), No. 21-6118 (10th Cir., January 18, 2023) (Published) (Matheson, Carson & Rossman) (W.D. Okla., Hon. Timothy D. DeGiusti, C.J.): **Evidence (Bolstering/Vouching); Jury Instructions (Allen Instruction); Cumulative Error:** Convictions for Child Sex Trafficking and Conspiracy are affirmed over claims relating to: 1) sufficiency; 2) admission of improper testimony; 3) improper bolstering by a Government witness (a guardian ad litem mouthed “you’re doing a good job” during the minor’s testimony. Defense counsel objected and the trial court gave a curative instruction, but since neither of these were objected to the panel reviewed for plain error; 4) post-trial interactions with the jury by the district court; and 5) cumulative error.

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.

VICTORIES

[BLAKE BURNS & BRET BURNS](#), Chickasha, a father and son duo, saw son Blake handle his first jury trial representing a client charged with Manslaughter in the First Degree involving a traffic accident where the driver did not see a bicycle while driving into the sun. The State recommended 20 years to do. The jury was out less than 20 minutes in Grady County before returning a verdict of not guilty. **NOTE:** This case also involved an [opinion from the OCCA](#) concerning the State’s interlocutory appeal involving a *Daubert* challenge to the State’s effort to establish speed through the “Infotainment” hard drive of the vehicle (not the black box). Great job Blake and Bret!

ROBERT GIFFORD, OKC, secured a hung jury in the Northern District in a case involving an allegation of Attempted Murder which included three eyewitnesses. The defense revolved intent because the accused did not think the gun actually worked and the Government did not have investigators check to actually see if it did. Nice job, Robert!

TOMMY ADLER, OKC, secured a not guilty verdict in Oklahoma County in a child abuse murder case where the devastating cross-examination of the State case agent likely won the day. Another great win by Tommy!

HEARSAY

DOMESTIC ABUSE: A state legislator wants judges to have more discretion in sentencing women who are victims of domestic violence but get convicted in related cases.

GUNS: OKC PD says that on average two firearms per day have been stolen out of vehicles so far in 2023, most in unlocked vehicles.

FORFEITURE RACKET: In the City of Norman, the police get 75% of forfeiture funds and the DA gets 25%.

PC: OKC police need more probable cause than simply being on a terror watch list to stop a motorist.

SWORN: Ken Tucker has been sworn in as the new Special Judge in Muskogee County.

DEPUTIES: The Tulsa County Sheriff's Office is preparing to graduate its first class of recruits from its own CLEET academy.

BUST: OBN agents seized 114 kilos of meth in a recent bust.

CRIME: Violent crimes committed by juveniles in Tulsa (mostly gang-related) are on the rise.

DRUGS: Police have a new "TruNarc" device designed to detect drugs in the field.

INVESTIGATION: There was a year-long investigation into the Deputy Chief of Police at Edmond.

JAIL DEATH: The first death of a jail detainee in Oklahoma County for 2023 occurred recently.

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

CRUISER: The Garfield County Sheriff has a great new, old police cruiser.

READER: The Nicholls Hills PD is getting a new license plate reader.

DRUG COURT: Nice article about a success story in Drug Court out of Cleveland County.

BATF: Oklahoma Sheriffs state that they will not enforce a new BATF rule dealing with stabilizing braces on firearms, which are in use by millions of gun owners who are now apparently felons under the new rule.

STOPPED: An OKC man has been stopped multiple times because he is on a federal watch list but does not know why.

ADDICTION: The Cherokee Nation is fighting addiction in NE Oklahoma.

DEFENSE: Tulsa defense attorney Allen Smallwood, who represents Steve Kunzweiler's daughter, speaks about the case. She has been found **not guilty by reason of mental illness** in the stabbing of her father.

HELP: A new thrift store in Tulsa will aid women who have been released recently from prison.

REVOVATION: The cost to renovate the Tulsa County Courthouse may be \$100 million, with commentary by attorney MJ Denman.

DRONES: The Stillwater PD is using drones to catch criminals.

RIP: A young Tulsa PD detective has died of cancer.

WACKY CRIME

TULSA: A man broke into a Tulsa business...using a gargoyle statue.

GENUIS: In his attempt to prove his innocence, a man proved his guilt by inviting deputies into his home.

SAPULPA: The City of Sapulpa had a little bit of fun with Google maps.

PLATES: Here is a list of Oklahoma license plates that were requested, but rejected (some make sense, others do not).

DEFENSE: A gas station clerk fended off a would-be robber...with office supplies, including a three-hole punch to the noggin.

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