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OKLAHOMA CRIMINAL DEFENSE WEEKLY

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[James L. Hankins,](#)
Publisher

(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

[In Re Adoption of 2024 Revisions to Oklahoma Uniform Jury Instructions—Criminal \(Second Edition\)](#), 2024 OK CR 2 (February 6, 2024): In this Order the Court revised multiple jury instructions, so if you have an upcoming trial, make sure you have the most recent jury instructions.

[Christian Littlehead v. State of Oklahoma, ex rel. Department of Public Safety](#), No. 121,146 (Okla. Civ. App., Div. IV, February 9, 2024) (Not for Official Publication): **DUI (DPS)**: In this driver’s license case out of Cleveland County, DPS did not show for the hearing, but Service Oklahoma did. The Hon. Jeff Virgin held that Service Oklahoma had no standing. The panel held this was error and remanded.

TENTH CIRCUIT

[United States v. Montelito Sanchez Simpkins](#), No. 22-7048 (10th Cir., January 24, 2024) (Published) (Matheson, Phillips & Moritz): **Indians; Sufficiency (Indian Country Crimes Act); Invited Error**: Simpkins was convicted of sexual abuse of a minor in Indian Country under the Indian Country Crimes Act, which applies only if either the victim or the defendant—but not both—is an Indian. The indictment alleged that the accusers were Indians, but not Simpkins. The panel reversed because the Government presented insufficient evidence for a reasonable jury to conclude that he was not an Indian, which is an element of the offense. Also, the Government argued that the error was “invited” because defense counsel omitted this element from his proposed jury instructions. However, the panel held that it must assess error against the legal elements of the offense, not against the elements listed in the jury instructions.

[United States v. Jerry Darnell Dawson, Jr.](#), No. 22-8064 (10th Cir., January 22, 2024) (Published) (Phillips, Baldock & McHugh): **Search and Seizure (Traffic Stops)**: Traffic stop case in Wyoming where the trooper issued a speeding ticket to a motorist in a rental car. The issue was whether the officer may prolong a completed traffic stop of a rental vehicle absent reasonable suspicion to determine whether the driver is authorized to drive the vehicle at the time of the stop. The panel held that the officer may do this. NOTE: This is another incremental encroachment upon the liberty of motorists under the thin guise of traffic law enforcement, in an opinion authored by Judge Bobby Baldock, whom I do not ever recall siding with a citizen against the Government.

[United States v. John Miguel Swan](#), No. 22-6132 (10th Cir., January 23, 2024) (Published) (Matheson, Bacharach & Moritz) (W.D. Okla., Hon. Stephen P. Friot): **Guilty Pleas**: Odd case where the district court denied Swan’s motion to withdraw his pre-sentence plea of guilty where defense counsel for some reason told Swan that all minorities would be removed from the jury pool and he would be tried to an all-white jury. The panel reversed, holding that this rendered the plea unknowing and involuntary.

[United States v. Kearn](#), No. 23-3029 (10th Cir., January 23, 2024) (Published) (Tymkovich, Murphy & Carson): **Guilty Pleas; IAC**: Kearn was indicted on three counts of child porn and was offered a plea deal of 10 years. He faced 30 years maximum. After a six-minute discussion with counsel, he rejected the deal and went to trial and received 24 years. He filed a 2255 motion raising an IAC

claim regarding the adequacy of the advice during plea discussions. The district court granted relief, ordered the Government to re-offer the same deal, and sentenced him to 10 years. In this opinion, the panel affirmed.

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. Ivonne M. Falcon-Nieves](#), No. 20-2189 (1st Cir., August 23, 2023): **Severance; Sufficiency (Bribery, Fraud, Extortion); Conspiracy (Variance)**: Sisters were convicted of public corruption in Puerto Rico and in this opinion the panel reversed on the grounds of denial of severance from another co-defendant, sufficiency of the evidence for federal program bribery and honest services fraud, and aiding and abetting extortion, and a conspiracy conviction is vacated due to prejudicial variance.

[United States v. Johnnie Gamble](#), No. 22-3017 (D.C. Cir., August 1, 2023): **Search and Seizure (Seized)**: D.C. police approached Gamble and asked if he was carrying a gun. He said no, then the officer instructed him to show his waistband, which Gamble did. The officer noticed an object there and instructed Gamble to lift his shirt again, at which point he took off running and discarded a firearm. The district court denied the motion to suppress, but the panel reversed, holding that Gamble had been “seized” when he was instructed by police to show his waistband.

[United States v. Robert J. Chaires](#), No. 20-4162 (2nd Cir., December 7, 2023): **Federal Sentencing Guidelines (ACCA)**: Two prior state-court drug convictions are not categorically predicates for the Career Offender enhancement.

VICTORIES

ROYCE HOBBS, Stillwater, traveled to Lincoln County to represent a client charged with two counts of Lewd Molestation, and one count of Using Video Equipment in Clandestine Manner. Not guilty on the two counts of Lewd Molestation but a guilty on the non-85% non-registration Video count. Client was already in prison on another charge and testified anyway(!) That is a great result, and on the heels of another outright acquittal a couple of weeks ago in a [rape case](#). Great work, Royce!

[TROY COWIN](#), OIDS, represented a client charged with Murder in the First Degree but secured a verdict of Murder in the Second Degree. Any time we walk into court in a Murder One case and walk out with something different it is a good result. Nice work, Troy!

[CHANCE RABON](#), OIDS Lawton, secured an acquittal for a client accused of Child Sexual Abuse in Comanche County. Not many details but sounds like a good win. Nice job, Chance!

HEARSAY

[PAROLE](#): The Pardon and Parole Board changed the rules regarding parole eligibility, but requiring legislative approval.

[RESIGNS](#): Former Lincoln County District Judge Traci Soderstrom has resigned pending disciplinary proceedings stemming from the infamous incident where she texted excessively on the bench during a murder trial. She [spoke out](#) about her actions and made some accusations against the Court Clerk.

[CHARGED](#): The Attorney General has charged three persons, including Brent Swadley, with defrauding the State. Also, Swadley has [counter-sued](#).

[LOOPHOLE](#): A state legislator has filed a bill to close a “legal loophole” which would make Accessory an 85% crime.

[STOPPED](#): The Carter County Sheriff has been stopped for speeding.

SWORN: The Choctaw Nation has sworn in its newest appellate court judge, Mr. Fob Jones.

FOR SALE: Anybody want to buy a courthouse? The former Washington County Courthouse is for sale.

FIRE: Two OKC P.D. patrol cars caught fire after they were parked in tall, dry grass following a pursuit.

RESPONSE: Three Comanche County judges respond to the bill which would force judges to retire at age 75.

LITIGATION: Del City will sue Oklahoma County if the new jail is sited next to it.

WACKY CRIME

ALVA: An Alva man's ex-wife starting talking "voodoo stuff" so he kicked her out and she keyed his truck as she left for which she was arrested.

LAWTON HEADLINE: Lawton Teen Tells Police I Made Some Bad Decisions Tonight After Standoff.

AI?: Robot lawyers arguing cases in court using Artificial Intelligence is maybe not as far-fetched as it sounds.

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