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Category



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[State v. William Edward Johnson, Jr.](#), No. S-2023-506 (OkI.Cr., February 29, 2024) (unpublished): **State Appeals; Quash; Assault & Battery**: This is a State appeal out of Tulsa County where the Hon. David Guten granted a motion to quash in a case of laser-pointing at a police helicopter that was charged as Assault with a Dangerous Weapon. Judge Guten held that the State presented insufficient evidence of the element of intent to do bodily harm. The Court reversed in this sharp 3-2 opinion. NOTE: This is continued silliness from Court and the second State appeal where the Court has reversed Judge Guten. The first appeal was reversed where the Court held that the State may charge under the Assault statute, even though there is a specific statute governing the specific conduct of pointing lasers at aircraft. Judges Rowland and Lumpkin dissented in that prior appeal, and

also dissented here. Judge Hudson specially concurred, on the laughable legal basis that nothing in the Laser Safety Act (21 O.S. 1992) preempts the charge filed in this case. His reason is that no misdemeanor crime under Oklahoma law allows shining a laser with intent to do bodily harm.

EXECUTIONS: The OCCA has set a show cause hearing for the State on the subject of the DOC request for longer intervals between executions. The hearing will be held on March 26, 2024, at 10:30 a.m.

NOTICE TO ATTORNEYS: The OCCA has tweaked the number of copies to be filed. The Petition in Error and Briefs still require the original +10, but all other pleadings require the original +7. The link goes to a helpful sheet that contains the filing requirements for our appellate courts.

TENTH CIRCUIT

[United States v. Garrett Joseph Hurst](#), No. 22-7041 (10th Cir., March 1, 2024) (Published) (Bacharach, Briscoe & Moritz) (E.D. Okla., Hon. Bernard M. Jones, II): **Federal Sentencing Guidelines (Reasonableness; Acceptance of Responsibility); Plea Agreements; Supervised Release:** In this plea case, sentence of the maximum of 180 months for child sexual abuse is affirmed over claims related to: 1) rejection of proposed plea agreement; 2) denial of 2-point acceptance of responsibility; 3) substantive reasonableness; and 4) failure to explain 13-years of supervised release.

[United States v. Matthew Ware](#), No. 22-6203 (10th Cir., February 28, 2024) (Published) (Rossman, Kelly & Murphy) (W.D. Okla., Hon. Stephen P. Friot): **Federal Sentencing Guidelines (Reasonableness):** In this case involving convictions for Deprivation of Rights Under Color of Law, the sentence of 46-months is affirmed over a claim of substantive unreasonableness. NOTE: Ware was a correctional officer at the Kay County Detention Center in Newkirk, OK. The case involved abuse of inmates.

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

[Santos Argueta et al. v. Derrick S. Jaradi](#), No. 22-40781 (5th Cir., February 29, 2024) (*en banc*): **Civil Rights; Self-Defense**: This is a fractured ruling on a petition for *en banc* with seven judges voting in favor, and ten against. As the dissenters presented the issue, it is a civil rights case involving qualified immunity for an officer shooting a fleeing suspect in the back without warning when the suspect shielded his arm from view and the officer thought the suspect might be armed. I included this opinion because some self-defense case have this scenario and the civil law here might help a criminal defendant if they are allowed the same standards as police.

[United States v. Daniel Donald](#), No. 22-1723 (1st Cir., October 16, 2023): **Interrogations (Fifth Amendment)**: Convictions vacated on *Miranda* violation.

[United States v. Brett Wayne Parkins](#), No. 22-50186 (9th Cir., December 11, 2023): **Search and Seizure (Consent; Common Authority)**: Denial of motion to suppress search of apartment is reversed because the consent by the girlfriend to the warrantless search of apartment over the objecting co-tenant was error.

[United States v. Roderick T. Long](#), No. 22-3033 (3rd Cir., February 8, 2024): **Trial Procedure; Evidence (Review)**: This is an odd case where the circuit noted that in a prior case it had examined whether a district court abused its discretion when admitting evidence in a criminal case over objection without examining the evidence; however, in this case the inverse question is presented: did the district court abuse its discretion by excluding evidence (child porn) offered by the government without examining it? The answer is yes.

VICTORIES

TIMMIE KLEIN, OIDS, secured a win at the OCCA in a YO case. These cases are argued and decided immediately, so we may have an opinion coming later, but great work by Timmie!

BRIAN MORTON, OKC, had 12 DPS driver's license hearings recently---and won all 12 on various grounds, including 8 in a manner that cannot be appealed. This is an amazing win streak. Great job, Brian!

ANGELA SONAGERRO & BRIAN MORTON, Tulsa, were able to secure a demurrer at PH before Judge Glidewell on a felony DUI charge in Oklahoma County. The stop was conducted by OCU campus police. The prosecutor failed to place into evidence the jurisdictional agreement between OCU and Oklahoma City. Thus, the jurisdictional issue was a winner. This is an amazing continued win streak for Brian and excellent work by Angela!

HEARSAY

RETIRED: OKC Chief of Police Wade Gourley has announced his retirement.

INDICTED: Garfield County Associate District Judge Brian Lovell has been indicted on eight felony counts in Texas.

FLOCK: Sand Springs police are happy with the results of their Flock cameras. These cameras scan every license tag that passes by and runs it for wants and warrants. If you are liberty-minded this is very spooky.

LATE: A defendant in Tulsa County found out to the tune of 10 hours of community service the price of being late to court.

FIRED: An inmate has been fired from his job with Oklahoma Corrections Industries for bringing contraband into LCF.

STAYED: The Ponca City P.D. is staying child neglect cases tied to marijuana use pending a decision from the OCCA.

SWORN: Meet the new Associate District Judge in Murray County.

RESIGNED: The Chief of Police in the town of Commerce has resigned.

CONTRABAND: The Frontier reports on all of the drug contraband making its way into prisons.

SEMINOLE COUNTY: The State Auditor & Inspector has uncovered “years of malfeasance” at the Seminole County Sheriff’s Office.

DENIED: A Tulsa man has been denied a law license on what appears to be character/fitness grounds.

APPOINTED: Gov. Stitt has appointed Mark Melton as Associate District Judge for Murray County.

WACKY CRIME

DONUTS: A woman stole a pickup from a dealership and proceeded to do donuts on the Sequoyah High School football field.

OMAHA: In a bit of wackiness out of Nebraska, an Omaha woman has been charged with smuggling meth into a facility by hiding it...in her belly button.

HEADLINE: “Drunk man arrested after slapping his rear flipping bird to officers.” NOTE: That sounds like a protected form of speech.

SHRIMP: When an OKC woman found out that “endless shrimp” does not mean all of the shrimp that she can take home with her, she went ballistic.

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