

OCDW 03.18.24

Category



OKLAHOMA CRIMINAL DEFENSE WEEKLY

www.ocdw.com

03.18.24

[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

[C.A.D. v. State](#), No. J-2023-954 (Ok1.Cr., March 14, 2024) (unpublished): **Juveniles & Y.O.:** In this Youthful Offender case out of Washington County involving allegations of sexual assault, the Hon. Russell C. Vaclaw sentenced C.A.D. as an adult. The Court reversed, finding an abuse of discretion.

[Kendall Maurice Burnett v. State](#), No. F-2021-1325 (Ok1.Cr., March 14, 2024) (unpublished): **Sufficiency; Conspiracy:** In this case involving several counts of Child Neglect out of Washington County (the Hon. Linda Thomas, presiding), the Court affirmed, except for a count of Conspiracy to Commit Child Abuse which was reversed for insufficient evidence of an overt act. NOTE: The discussion on what constitutes an overt act in this context is instructive.

[State v. M.C.](#), No. JS-2023-913 (Okl.Cr., March 7, 2024) (unpublished):

Juveniles and Y.O.: M.C. was charged as a Youthful Offender with a drive-by and SWIK in Cleveland County. The State filed a motion for adult sentencing, but the Hon. Scott F. Brockman denied the motion. The State appealed, and in this opinion the Court affirmed. NOTE: This was a fractured set of opinions. Presiding Judge Rowland concurred specially, apparently to tell us that he really did not like ruling this way but had to follow the proper abuse of discretion standard, which is laudable. Vice-Presiding Judge Musseman also concurred specially, expounding his thoughts on the rehabilitation plan component of the analysis. Judge Hudson dissented on the basis that he simply disagreed with the district court on the facts and with no apparent effort to apply the abuse of discretion standard.

[Micah Hobson v. State of Oklahoma ex rel. Department of Public Safety](#), No. 121,147 (Okla. Civ. App., Div. IV, March 15, 2024) (Not for Official Publication):

DUI (DPS): In this driver's license revocation appeal out of Cleveland County, the Hon. Jeff Virgin held that Service Oklahoma lacked standing to appear and present evidence. The panel reversed, holding that Service Oklahoma did have standing to appear on behalf of the State.

[Deraj'e N. Jackson v. State](#), No. F-2022-640 (Okl.Cr., March 7, 2024)

(unpublished): **Double Jeopardy:** Jackson was convicted at a bench trial in Pittsburg County before the Hon. Timothy E. Mills of Possession of a Firearm AFCF and KCSP (the same gun). The Court affirmed, but reversed Count 2 based on double punishment.

TENTH CIRCUIT

[United States v. Youlian Zhong](#), No. 22-1034 (10th Cir., March 12, 2024)

(Published) (Eid, Ebel & Kelly): **Federal Sentencing Guidelines (Safety Valve):** In this drug case where the accused was sentenced to the mandatory minimum, denial of safety valve reduction is affirmed because Zhong had not disclosed to the Government information sufficient to establish her *mens rea* for the crimes.

[United States v. Richard Ronquillo](#), No. 22-1247 (10th Cir., March 7, 2024)

(Published) (Carson, Baldock & Ebel): **Search and Seizure (Curtilage):** In this drug case, police searched a detached garage as part of the curtilage of a home pursuant to a search warrant. 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).*

[Pulsifer v. United States](#), No. 22-340 (U.S., March 15, 2024): **Federal Sentencing Guidelines (Safety Valve)**: In this drug case, Pulsifer argued he was eligible for a Safety Valve sentencing to get him from under the mandatory minimum. Eligibility has three criteria, he fails two but not the third. He argued below that he is eligible because one must fail all three to be ineligible. The Government argued that failure on any one of them mandates ineligibility. The Court sided with the Government. NOTE: Justice Gorsuch dissented, joined by Justice Sotomayor and Justice Jackson, and makes in my estimation the superior argument supporting the prisoner here.

VICTORIES

JUVENILE APPEALS: We have two appellate wins in juvenile/Y.O. cases, in the M.C. case and the C.A.D. case. **Susanna Hearne**, OIDS, brought home the win in the M.C. case. **Timmi Ruth Kline**, OIDS, in the C.A.D. case. Great work, Susanna and Timmi!

[TYSON STANEK](#), OIDS-Norman, represented a client accused of rape in McClain County. The headline read, “Accused Rapist Not Guilty.” The district judge was the Hon. Charles Gray. Great job, Tyson!

[ADAM R. BANNER & MARNA FRANKLIN](#), OKC, finished up a seven day jury trial in McClain County representing a client accused of Sexual Battery. The accused was a police officer for Purcell PD and the complaining witness had accused him of committing the offense during a stop. The body cam was not activated during the contact, and compounding things for the defense was the fact that the DNA of the client was found on the jeans button of the complaining

witness. Client did not testify. Jury deliberated about three hours before delivering the not guilty verdict. Terrific result, Adam and Marna!

HEARSAY

HONORED: Josh D. Lee has been selected for the Marion Opala First Amendment Award presented by FOI Oklahoma. This award is presented during Sunshine Week (March 10-16) to bring attention to open records. Congrats, Josh.

BUDGET: The Cleveland County Sheriff's Office is having a difficult time balancing its budget.

RETIRED: The Stillwater Chief of Police has retired.

LEAVE: An Owasso detective has been placed on leave for shooting his neighbor's dog.

GUNS: So many guns have been stolen in Tulsa this year that the PD has created "Where is Your Gun Wednesday" to make citizens aware of the location of their firearms.

REGRET: Former LeFlore County D.A. Mike Sullivan regrets prosecuting a woman for a homicide that might have been justified.

REEFER: The Frontier examined the rise of organized crime from China in Oklahoma as it pertains to marijuana.

SCUFFLE: Law enforcement in Bartlesville had to break up a melee outside of the courthouse after friends and family of a murder victim encountered the friends and family of the accused.

LAWTON: The Chief of Police in Lawton says that his job is serving the community and trying to make a difference.

R.I.P.: Noted Norman attorney Stan Ward, 84, has passed.

WACKY CRIME

COMANCHE COUNTY: A box truck carrying \$2 million worth of medicine was stolen from the Comanche County Memorial Hospital...and then got involved in a police chase.

SIGNS: The Pittsburg County Sheriff is looking for some teens who had stolen or damaged signs...specifically, the Sheriff's re-election campaign signs.

STOLEN: An Ardmore man's truck was stolen...then recovered by police...then stolen again.

UNEXPECTED: An "unexpected wildlife accident" occurred in Sequoyah County when a kangaroo was hit and killed.

OKLAHOMA CRIMINAL DEFENSE WEEKLY

SUBSCRIPTIONS AND SUBMISSIONS: To subscribe to the *Oklahoma Criminal Defense Weekly* just send an e-mail to James L. Hankins at jameshankins@ocdw.com and include the e-mail address to which you want the issues to be delivered. I am sending out the issues for free now to whoever wants to receive them. Submissions of articles, war stories, letters, victory stories, comments or questions can be sent to Mr. Hankins via e-mail or you can contact him by phone at 405.753.4150, by fax at 405.445.4956, or by regular mail at James L. Hankins, MON ABRI BUSINESS CENTER, 2524 N. Broadway, Edmond, OK 73034.

ABOUT THE OCDW: The *Oklahoma Criminal Defense Weekly* is compiled, maintained, edited and distributed weekly by attorney James L. Hankins. Archived issues can be obtained by contacting Mr. Hankins directly, although some of them are on the web site at www.ocdw.com. OCDW accepts no money from sponsors. Mr. Hankins is solely responsible for its content. The OCDW web site is maintained by [Spark Line](#).

COPYRIGHT STATEMENT & DISCLAIMER: ©2005-2024 by James L. Hankins. All rights reserved. OCDW hereby grants free use of these materials for any non-commercial purpose provided that proper credit to the OCDW is given. In the event that copyrighted works are included in an edition of the OCDW such works may not be reproduced without the consent of the copyright holder because under federal law the OCDW has no authority to allow the reproduction of the intellectual property of others. For purposes that go beyond "fair use" of the copyrighted

material under federal law, the permission of the copyright holder must be obtained. If you are a copyright holder and object to any portion of an issue of the OCDW, please contact the publisher, James L. Hankins, at the contact information above (located under the SUBSCRIPTIONS AND SUBMISSIONS section). Finally, the materials presented in this newsletter are for informational purposes only, and are not, nor intended to be, legal advice or to create an attorney-client relationship. You should consult an experienced attorney licensed in your jurisdiction for legal advice applicable to the specific facts of your case. Cases are summarized in each weekly issue as they are issued and filed by the respective court, and are thus subject to being withdrawn, corrected, vacated, and/or modified or reversed without notice. Always conduct your own research!

UNSUBSCRIBE

If you have received this e-mail in error, or no longer wish to receive the weekly newsletter, simply reply to the message, or send a new message, to jameshankins@ocdw.com and type in "UNSUBSCRIBE" in the subject line, along with your name and e-mail address and you will be taken off the mailing list.