

OCDW 03.22.22

Category



OKLAHOMA CRIMINAL DEFENSE WEEKLY

www.ocdw.com

03.22.22

[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

[State v. Blas Medrano-Ceniceros](#), No. S-2021-479 (Ok1.Cr., March 17, 2022) (unpublished): **DUI (Blood Draw); State Appeals:** The accused was charged with Manslaughter in the First Degree and Leaving the Scene of a Fatality Accident in Comanche County. He filed a motion to suppress the statutory blood draw which was granted by the district court, the Hon. Gerald F. Neuwirth. In this opinion, the Court reversed, holding that the issue was governed by the blood draw statute 47 O.S. 10-104(B), which the officer complied with in good faith, and the blood draw took place prior to *Stewart v. State*, 2019 OK CR 6, which held that compliance with the statute only is insufficient.

[Paul Lewis Sims v. State](#), No. F-2020-56 (Okl.Cr., March 17, 2022) (unpublished): **Waiver (Appellate Issues)**: Sims was convicted by jury in Canadian County (the Hon. Paul Hesse, presiding), of Child Sexual Abuse. He raised issues relating to *Burks* evidence of other sex offenses that occurred in Morocco and IAC (no objection at trial, so the Court reviewed for plain error), and the Court affirmed. I included the opinion because the Court cited a case that requires a defendant complaining about a lack of pre-trial notice to withdraw his announcement of ready for trial and request a continuance (*citing Diaz v. State*, 1986 OK CR 167). **NOTE**: Be aware of this requirement in the context of surprise evidence and testimony at trial. You must: 1) object; 2) withdraw your announcement of ready for trial; and 3) request a continuance (and be further aware that a request for a continuance must be in writing and supported by affidavit). The Court will torpedo good claims if trial counsel fails to protect the record in this regard.

[State v. Darnell Bryant Kelly](#), No. S-2021-254 (Okl.Cr., March 17, 2022) (unpublished): **Double Jeopardy; State Appeals**: Kelly was charged in Garfield County with Trafficking, and also charged in a second case with Trafficking and other offenses. The first case related to evidence obtained from a vehicle search; the second from evidence obtained from a home search. The Hon. Paul K. Woodward granted the State's motion for joinder of both cases for trial, but ordered the State to file an Amended Information merging both cases into four counts. The Court granted a writ of prohibition on a few legal bases and sent the case back to the district court. Judge Woodward *sua sponte* ordered one of the Trafficking charges dismissed, reasoning that the statute prohibits possession of a specific amount of cocaine and that possession does not have to occur in one place (basically one act of possession even though drugs found in two places). In this opinion, the Court reversed, holding that there was an abuse of discretion in dismissing the second count on double punishment grounds of 21 O.S. 11. **NOTE**: Judge Rowland concurred in result, finding that *de novo* review rather than abuse of discretion is required because the case is about statutory construction. Judge Lewis specially concurred, finding that the appeal by the State is procedurally proper.

TENTH CIRCUIT

[United States v. John Michael McIntosh](#), No. 20-5089 (10th Cir., March 21, 2022) (Published) (McHugh, Ebel & Eid) (Hon. John E. Dowdell, presiding): **Guilty Pleas**: McIntosh pled to five counts of robbery, plus three counts of brandishing a

pistol during those robberies. However, at a change-in-plea hearing, he questioned whether he should plead guilty and suggested that his mental capacity was impaired. He pled anyway, then moved to withdraw it. In this opinion, the panel found that the district court failed to ensure that the plea was knowingly and voluntarily made, mainly because the district court failed to address the fact that McIntosh was off his meds at the time of the plea, vacated the convictions, and remanded. NOTE: Judge Eid dissented, finding the rule instituted by the majority about inquiry when the accused says he is off meds to be too broad, and the facts showed that the plea was voluntary and knowing.

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. John Richard Proctor](#), No. 19-7071 (4th Cir., March 16, 2022): **Federal Sentencing Guidelines (ACCA)**: Maryland crime of assault with intent to prevent lawful apprehension or detainer is not categorically a “violent felony” under the ACCA.

[United States v. Soterio Lamar Hope](#), No. 20-4420 (4th Cir., March 9, 2022): **Federal Sentencing Guidelines (ACCA)**: Three prior convictions under South Carolina law for possession of marijuana w/intent in proximity to a school do not qualify as “serious drug offenses” under the ACCA.

VICTORIES

JEREMY BENNETT, Miami, obtained a nice result in a jury trial in Delaware County where the jury acquitted his client of rape and kidnapping, but convicted on a lesser offense of domestic violence. Nice work, Jeremy!

MARK KANE, Bartlesville, walked his court-appointed client out of the courthouse a free man. The client was stumbling around intoxicated in Tulsa and arrested in April, 2021, on a warrant that had been issued in August, 2007, for a Lewd Molestation offense that is alleged to have occurred in January, 2006. The client was 19 and the complaining witness 12 at the time of the alleged offense. The passage of time made it difficult for both the State and the defense, and it was odd that the client had been arrested over 20 times in other states but the warrant was never discovered because the judge had circled the instruction box at the bottom of the warrant to not extradite/enter into NCIC. The same judge declined to dismiss based upon speedy trial/defective warrant grounds. No matter, though, because the State failed to prove the case, and Mark noted that the DHS/CW investigator at the time did a poor job of investigating. Great job, Mark!

HEARSAY

BODYCAMS: Southeastern Oklahoma law enforcement focus on bodycams.

McGIRT: The Chickasaw Nation appears to be picking up criminal cases in light of *McGirt*.

DOC: By-the-numbers look at DOC demographics.

TECH: New crime scene technology: Dowsing for the Dead.

HALT: A jury trial in Payne County came to an abrupt halt when the accused pled to a different crime.

BOP: Elderly inmates in BOP have fallen through the cracks.

VAWA: The re-authorization of the Violence Against Women Act has given the Tribes some power.

OPEN RECORDS: The McAlester City Clerk explained the nuts and bolts of open records requests.

IMPERSONATORS: A group of men is impersonating law enforcement to raid/rob marijuana operations.

CELEBRATION: The Cherokee Nation celebrated the one-year anniversary of the *Hogner* decision from the OCCA.

TIK-TOK: Police in Tulsa believe that a Tik-Tok challenge to randomly shoot people with pellet guns in Tulsa is underway.

CHARGED: An Oklahoma City police Lieutenant has been charged with child neglect.

JAILS: Some jails are implementing health-monitoring tech to avoid inmate deaths.

INNOCENCE COMMISSION: Shaun Hittle, an investigator for OIDS, penned an opinion piece for NonDoc about the need for an innocence commission.

FUNDS: A state senator has blamed *McGirt* for a loss of funds to the state court system.

WACKY CRIME

TULSA: Police in Tulsa stopped a Tesla going 83 mph...in a 35 mph zone.

TULSA II: An Air-B-and-B in Tulsa was rented...and promptly looted.

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