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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

[Anthony Jess Coldiron Rangel v. State](#), 2023 OK CR 3 (March 9, 2023): **Felony Murder**: Rangel was convicted by jury in Oklahoma County (the Hon. Natalie Mai, presiding) of First Degree Felony Murder, the basic allegation being that he was the buyer of drugs during a drug transaction where a person died. The Court reversed on the basis that the evidence was insufficient to convict by virtue of Rangel’s status of a buyer and in fact he was a lookout while others bought (as such he could not be held liable as a principal to the underlying felony of drug distribution). NOTE: Judge Lumpkin concurred in result; Judge Lewis concurred in part/dissented in part.

[Jeffrey Alan Davis v. State](#), No. F-2021-403 (Okla. Cr., March 16, 2023) (unpublished): **Supplementation of the Record; Waiver (Jury Trial)**: In this bench trial out of Pottawatomie County, Davis was convicted by the Hon. John Canavan, Jr., of Rape in the First Degree and sentenced to LWOP. The Court affirmed, but I included this opinion because Davis raised a claim that his waiver of jury trial was not sufficiently made on the record. There was a hearing on the waiver, but it was not transcribed; however, the State moved to supplement the record on appeal with the recording and/or transcript by the court reporter of the hearing. The Court granted this and it showed a valid waiver. NOTE: Keep this procedure in mind in case you have an appeal that requires supplementation of the record in this manner.

[Dawnell Ruth Cantrell v. State](#), No. RE-2022-351 (Okla. Cr., March 23, 2023) (unpublished): **Suspended Sentences**: In this revocation case out of Payne County (the Hon. Phillip Corley, presiding), Cantrell raised a jurisdictional claim that her right to have a hearing within 20 days had been violated. The Court affirmed, noting that the 20-day timeframe is triggered “within twenty days after the entry of a plea of not guilty to the petition” and in this case there was no plea of not guilty at the initial appearance. NOTE: Keep this mind in revocation cases. The rule is not 20 days from the initial appearance; it is 20 days from the date of the entry of the not guilty plea.

[Shawn Lee McDaniel v. State](#), No. F-2017-357 (Okla. Cr., March 16, 2023) (unpublished): **Evidence (Polygraphs)**: McDaniel was convicted by jury in Muskogee County (the Hon. Thomas H. Alford, presiding) of First Degree Murder. The Court affirmed, but there is an interesting discussion of admission of results of a polygraph exam of a State witness (error, but not reversible plain error). NOTE: The use of polygraph evidence spawned other opinions. Judge Musseman dissented, finding the error not harmless. Judge Lumpkin and Judge Lewis concurred specially, expounding upon the nature of plain error review and hinting that since defense counsel also used this evidence to argue reasonable doubt then the error did not seriously affect the integrity of the proceedings.

TENTH CIRCUIT

[United States v. Anthony Dean Prestel](#), No. 22-7009 (10th Cir., February 21, 2023) (Published) (Hartz, Baldock & Bacharach) (E.D. Okla., Hon. John F. Heil, III): **Supervised Release; Waiver (Appeals Waiver)**: Prestel tried to appeal

imposition of three special conditions of supervised release, but the panel held that he had waived his right to appeal on this basis.

[United States v. Asael Linares](#), No. 21-3210 (10th Cir., February 22, 2023) (Published) (Tymkovich, Seymour & Phillips): **Federal Sentencing Guidelines (Carjacking)**: Sentence enhancement for attempted carjacking is affirmed (the facts support an attempted, but not completed, carjacking).

[United States v. Ian Arbee Batara-Molina](#), No. 21-8079 (10th Cir., February 22, 2023) (Published) (Holmes, C.J., Ebel & Eid): **Search and Seizure (Traffic Stops; Drug Dogs/Delay)**: Seizure of drugs during traffic stop for speeding is affirmed over a claim that officers delayed unlawfully the stop to deploy the drug dog.

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. DeRon Edwards Robinson](#), No. 21-6056 (6th Cir., March 21, 2023): **Supervised Release**: Not a winner, but I included this case because it addresses common issues in supervised release cases: 1) the exclusionary rule usually does not apply (here the panel applied SCOTUS precedent regarding parole revocation hearings); and 2) there is no right to a jury trial except in a very limited circumstance under the statute (which was not present in this case).

[United States v. Germaine Cannady](#), No. 20-6906 (4th Cir., March 24, 2023): **IAC**: Dismissal of 2255 petition is reversed based on trial counsel’s failure to object to a career offender enhancement that was prejudicial as to the sentence.

[United States v. Marshall M. Cohen](#), No. 21-4612 (4th Cir., March 20, 2023):

Supervised Release: In this sex offender case, Cohen was directed to participate in a treatment program but violated the conditions of the program when he got on-line and traded dick pics for pics of female breasts on social media. The district court violated Cohen for this, but here the panel reversed, holding that the plain language of the condition was for Cohen to “participate in a sex offender treatment program” and that participating was not the same as less than perfect compliance. Notably, the treatment provider did not consider Cohen’s violation of the rules as an event disqualifying him from the program.

VICTORIES

BRECKEN WAGNER, McAlester, demonstrated superior advocacy recently in holding a law enforcement officer accountable for being accurate in an arrest affidavit. Brecken represented a client accused of Disturbing the Peace. However, there developed a discrepancy between the probable cause affidavit and the video of the incident from the deputy’s bodycam. Brecken filed a [motion](#) under Brady and demanded a hearing. The State [responded](#) and incredibly enough agreed with Brecken that the disparity between the description of the incident in the affidavit and the video footage constituted an error. This resulted in an [Order](#) from the district court essentially calling the deputy a liar and dismissing the case. The [consequences](#) for the deputy appear to be severe, as he has been placed on unpaid suspension. Nice work, Brecken!

HEARSAY

[RIP](#): Retired Stephens County District Judge George Lindley has passed.

[RIP II](#): A police captain in McAlester was found deceased of natural causes at his home.

[OIDs](#): The Oklahoma Indigent Defense System as a new website and look.

[INJURED](#): A McAlester police officer was injured in a head-on collision...during a funeral procession.

DRUG BUST: A drug seizure in Rogers County has set a county record for the single largest drug seizure.

CHARGED: A former OKC police officer has been charged with assaulting a restaurant owner with a vehicle because the restaurant ran out of an item on the menu.

ARRESTED: A captain on the OKC PD has been arrested for DUI.

ACCUSED: A state representative has been accused of harboring a fugitive in her office at the Capitol.

JAIL: There are five properties in the race for the site of the new Oklahoma County Jail.

THRWARTED: A contraband drop was thwarted at Dick Conner Correctional Center.

SPEED: A motorist in the panhandle was clocked at 108 mph.

MIXUP: A mixup between an Assistant D.A. and the Sheriff resulted in an inmate being released.

RETIRING: Judge Brad Leverett is retiring on May 1.

CLEARED: Attorney General Gentner Drummond has announced that he has cleared the backlog of Open Records requests.

INJURED: An Oklahoma County Deputy has been injured critically when a metal gate pieced the windshield of his vehicle as he was leaving a parking lot.

BOARD: Lee Thomas, Sr., has joined the Board of OJA.

NAMED: Attorney General Drummond has named Amie Ely as the First Assistant.

SEIZED: Carter County law enforcement gets to keep \$367,000.00 seized in a traffic stop in 2019.

WACKY CRIME

TWISTERS: It turns out that Pontotoc County, Oklahoma, is the single most likely spot for a tornado in the nation.

WITAF: A woman was sitting on her front porch in Dickson, Oklahoma...when a monkey came out of nowhere and bit her on the ear.

TULSA: A Tulsa man crashed into a TPD police cruiser after running a red light...while riding a bicycle.

POETIC ENDING: A driver fleeing police led police on a chase that ended...at the Oklahoma County Jail.

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