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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

[Florentino Rios v. State](#), No. F-2021-1272 (Okl.Cr., April 6, 2023) (unpublished):

Statute of Limitations: Rios was convicted by jury in Tulsa County (the Hon. William D. LaFortune, presiding) of Lewd Molestation. On appeal, Rios raised a statute of limitations defense, which under the statute is 7 years from the date of discovery, and discovery is also further defined as the date that an offense on a victim under the age of 18 is reported to law enforcement up to an including one year from the 18th birthday of the child. Rios argued that the discovery must occur prior to the victim reaching the age of 19, which the statute seems to say. The Court disagreed, construing the statute in a way that allowed the prosecution.

NOTE: The majority opinion is not well-written and does not offer much guidance on the Court’s construction of the statute. It appears to me that Judge Musseman is

still thinking, acting and writing like a district judge rather than an appellate judge. Judge Lewis dissented, construing the statute to mean that the report of the crime to law enforcement must occur prior to the child's 19th birthday. Judge Lumpkin also dissented, agreeing with the interpretation of Judge Lewis but explicating the legislative history.

[State v. Darius Brian Pleasant](#), No. S-2022-375 (Okla. Cr., April 6, 2023) (unpublished): **State Appeals; Accomplice Liability**; Pleasant was bound over in Oklahoma County on a felony murder charge either in the commission of Kidnapping or murder in the second degree while in the commission of incitement to riot in a case involving an incident at the county jail. The Hon. Nikki Kirkpatrick granted the defense motion to quash, concluding that the evidence was insufficient on the charge of first degree murder. The Court reversed, simply disagreeing with the view of the evidence by Judge Kirkpatrick and concluding that Pleasant aided/abetted the crime and was thus liable as a principal. NOTE: Judge Rowland, P.J., specially concurred, as did Judge Lumpkin.

TENTH CIRCUIT

[United States v. Omar Francisco Orduno-Ramirez](#), No. 22-3019 (10th Cir., March 10, 2023) (Matheson, Kelly & Phillips): **Prosecutorial Misconduct (Spying on Counsel/Client)**: After a guilty plea, but prior to sentencing, the U.S. Attorney's Office in Kansas received soundless video recordings of five meetings between the accused and counsel. When the appellant raised this issue in a 2255 motion, the legal question was whether the post-plea intrusions were *per se* Sixth Amendment violations under circuit precedent or whether prejudice had to be shown. The panel held that prejudice must be shown, and thus affirmed the denial of relief. NOTE: The panel recognized that the district court found wide-spread and systemic abuse in the U.S. Attorney's Office, but essentially held that there was no prejudice because the U.S. Attorney's Office said there was not. So, no consequences at all for the wide-spread and systemic abuse.

[United States v. Conner Lee Polk](#), No. 22-5037 (10th Cir., March 13, 2023) (Published) (Moritz, Seymour & Eid) (N.D. Okla., Hon. Gregory K. Frizzell): **Assimilative Crimes Act**: Polk was convicted of state law offenses in Oklahoma on an Indian reservation under the ACA. He argued that the district court should have considered a shorter sentence pursuant to Oklahoma law which permits departure from a mandatory minimum sentence. The panel held that this state law

conflicts with federal sentencing policy and the district court properly declined to apply it.

[United States v. Joshua David Slinkard](#), No. 22-5018 (10th Cir., March 14, 2023) (Published) (Hartz, Baldock & Bacharach) (N.D. Okla., Hon. John F. Heil, III, C.J.): **Allocution**: Sentence reversed and remanded where the district court made a pre-allocation statement that was a definitive announcement of sentence.

[United States v. Gerardo Benitez Jimenez](#), No. 22-5017 (10th Cir., March 14, 2023) (Published) (Hartz, Baldock & Bacharach) (N.D. Okla., Hon. John F. Heil, III, C.J.): **Allocution**: Similar to the *Slinkard* case above, where the district court stated that it would not vary downward from the Guidelines, but the panel held that this statement did not stand plain error review and affirmed.

[United States v. Steven Anderson](#), No. 21-2151 (10th Cir., March 14, 2023) (Published) (Tymkovich, Seymour & Phillips): **Search and Seizure (Warrantless)**: Warrantless seizure in stopping Anderson on foot was supported by reasonable suspicion (pat down yielded no weapons, but Anderson gave officers a false name and SSN).

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. Thomas Bradford Waters](#), No. 19-7240 (4th Cir., March 30, 2023): **Retroactivity**: In *Rehaif v. United States*, 139 S.Ct. 2191 (2019), the Supreme Court held that in felon-in-possession cases the Government had to prove both that the accused knew he possessed a firearm and that he knew that he was a felon

(belonged to the relevant category of persons excluded from possessing firearms). In this opinion, the panel concluded that *Rehaif* was retroactive on collateral review for 2255 purposes because it announced a new substantive rule that narrowed the scope of a criminal statute.

[United States v. Thomas Douglas Butler](#), No. 22-20171 (5th Cir., April 7, 2023): **Federal Sentencing Guidelines (“Sexual Contact”)**: In a case involving sexual exploitation of a minor, a sentence can be enhanced if the underlying offense involves “the commission of a sexual act or sexual contact.” The question is whether masturbation is included. The panel noted that four circuits have concluded that it does, and the Fifth Circuit panel joined those. NOTE: The Tenth Circuit has apparently not addressed this question, so it is an open question but the weight of circuit authority seems to be against the accused on this issue.

VICTORIES

None noted.

HEARSAY

[MOONSHINE](#): Yes, a story about moonshine in Oklahoma where a couple have been arrested for an illegal moonshine operation.

[UNSOLVED](#): Some Tulsans remember an unsolved quadruple homicide from ten years ago.

[‘TIS NOT THE SEASON](#): A man with “previous wildlife violations” called a game warden in Adair County to report that his 4-year-old son had miraculously bagged two turkeys with one shot—unfortunately it happened on the wrong weekend for youth hunting season.

[VINDICTIVE](#): Attorney General Drummond has acknowledged the existence of vindictive prosecution.

[VEHICLES](#): The Osage County Sheriff will get a fleet of new vehicles.

[GANGS](#): There is apparently a prison gang...of Honkys.

HUGHES COUNTY: The District Attorney in Hughes County believes that the county jail is so dangerous that it needs to close.

NOT DENTISTRY: A Tulsa dentist has apparently been sedating children when she did not have any business doing so.

EXECUTION NEWS: The execution of death row inmate Phillip Hancock has been postponed. Also, Attorney General Drummond has released a **statement** on the Glossip case where the State has filed a motion to vacate the conviction.

TRANSITIONS: A new non-profit is coming to OKC to help women transition to life outside of prison.

TRAINING: The former Kate Barnard Correctional Center has re-opened as a training facility for officer recruits.

APPOINTED: Tulsa County District Judge Jim Huber has been appointed to the Court of Civil Appeals.

EXHIBIT: An exhibit on the campus of Oklahoma Baptist University showcases the clothing that victims of sexual assault had been wearing during the attacks.

SHOOTOUT: This is the story of the biker shootout at an OKC bar.

METH BUST: A deputy in Canadian County seized 30 pounds of meth during a traffic stop.

MENTAL ILLNESS: Tulsa County District Attorney Steve Kunzweiler says that the State needs to do more to address mental illness.

INMATE DEATH: Another inmate has died at the Oklahoma County Jail.

ARRESTED: An employee at the Grady County Jail has been arrested for raping an inmate.

RESIGNED: Both of the police officers of the Calvin Police Department have resigned, citing a hostile work environment.

WACKY CRIME

DUPED: A Stillwater police officer tricked a suspect into divulging his locations by using a simple text message...“Where you at?”

REASONABLE: Why was a man driving over 90mph on the Broken Arrow Expressway?...because his friend's cat had died.

DANCING: The City of Sapulpa has reminded readers that, like Elmore City, it once struggled with the notion of people dancing.

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