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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

[Washburne v. State](#), 2024 OK CR 9 (April 11, 2024): **Jury Instructions (85% Rule); Jury Sentencing:** Washburne was convicted by jury in Washington County (the Hon. Linda Thomas, presiding) of Lewd Proposals to a Child Under 16. One issue was whether Lewd Proposals (as opposed to Lewd Molestation) fell under the 85% Rule since it was not specifically listed in 21 O.S. 13.1. The Court held that it did. Also, the trial judge told the jury that its sentence was a recommendation, which is not the law, but no plain error. NOTE: Presiding Judge Rowland concurred in part/dissented in part, concluding that the 85% Rule cannot apply here as the statute is worded. Judge Lewis concurred in part/dissented in part on the same basis.

[Matthew Tyler Long v. State](#), No. RE-2023-13 (Okla. Cr., April 11, 2024) (unpublished): **Suspended Sentences; Protective Orders:** Long had entered pleas to Child Neglect and was placed on a suspended sentence. The State sought to revoke based upon a new crime of Violation of a Protective Order. However, an element of the crime is service upon the accused. The State conceded that there was no evidence before the trial court to satisfy this element, and thus the Court issued a rare reversal in a revocation case.

TENTH CIRCUIT

[United States v. Jason Vincent Bradley](#), No. 23-1223 (10th Cir., April 8, 2024) (Published) (Tymkovich, Baldock & Rossman): **First Step Act:** Denial of compassionate release under the First Step Act is 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).*

No new criminal cases.

OTHER CASES OF NOTE

[United States v. Deny Mitrovich](#), No. 23-1010 (7th Cir., March 12, 2024): **Discovery:** Mitrovich was a Chicago native caught up in a “sprawling multi-national investigation” into child pornography. He sought discovery of the technical information about the software programs used by Australia and New Zealand to identify his specific computer. The U.S. government had no information about it and despite efforts, was not able to obtain it. He raised discovery issues under Rule 16, and a Brady claim under the Fifth Amendment, but

here the panel rejected those claims, holding that Rule 16 does not impose an obligation to produce documents held exclusively by foreign authorities, and also that there was no showing of either suppression or prejudice under *Brady*. NOTE: This is not a winner, but the issue of helpful information held by foreign governments crops up from time to time and this opinion contains a good discussion of the issue.

CIVIL WAR (2024)

[*Civil War*](#) is the new movie offering from A24. I watched it this weekend, and highly recommend it. It is actually several movies in one, depending on your perspective. The premise is that America has fractured into several political factions and they are at war. The vehicle used to explore this situation is following photojournalists covering the conflict and the story is told through their experiences as they drive through the dangerous American landscape to Washington, D.C., where secessionist armies are attacking the White House and the American president.

The journey is harrowing. We are introduced first to Lee (played by Kirsten Dunst) and Joel (played by Wagner Moura), veteran reporters covering the war who decide to travel to D.C. to interview the president (played by Nick Offerman, Mr. Ron Swanson himself). They embark, but with a tag-a-long in the form of a young woman named Jessie (played by Cailee Speany) who looks like a teenager but who idolizes Lee and wants to be a photojournalist herself, and an older reporter named Sammy (played by Stephen McKinley Henderson).

As they travel to D.C., we see what America has become. Lawless, unstable, and very dangerous. They have to buy gas early on and the armed men around the gas station have beaten and strung up two “looters” one of whom was a high school classmate of the unnamed, menacing armed man, who casually asks Jessie what should be done to them; and Lee assuages concerns over payment by telling the station owner that she will pay in Canadian currency, the American dollar presumably had become hyper-inflated.

This is really the virtue of the movie, the clever way in which these things are hinted at, but never explained to the viewer. We know that American military forces are at war with other American military forces, but we do not really know specifically why, what started it, or the political nature of either side. Instead of being irritatingly vague or too cute by half as other films are that have tried this, it

works here, much in the same style as *Forrest Gump*, where we follow Forrest but it is really about the American experience as he moves through it. Lee, Jessie, Joel and Sammy move through this violent landscape as compelling characters in their own right, but the story is the very uncomfortable realization that Americans are killing Americans.

The unnamed armed military man in the trailer, played by Jesse Plemons, when told by Joel that they are all Americans, famously asks, “What kind of American are you?” This scene is brutal and uncomfortable to watch, partly because Plemons is so believable as a violent psychopath (as in his role of Todd in *Breaking Bad*), but also because it asks the viewer the same question.

They finally arrive at D.C. where the battle rages. We see American soldiers shooting other Americans, tanks breaching barricades, and Apache helicopters using rockets and mini-guns all aimed at American targets and the viewer realizes that yes, if this actually happened, these weapons would be used by both sides, against both sides. This makes the movie qualitatively different than other war movies, because it is not good guys versus bad guys, it is us against...us.

In *A Time to Kill*, Jake in all of Matthew McConaughey’s screen presence beseeches the jurors to close their eyes and imagine that the dead black girl was white. To white jurors, doing this personalizes the crime, directly involves them by changing their perspective. *Civil War* does this, but in a more direct way by simply presenting to the viewer Americans at war with each other, but with no frame of reference to who is right or who is wrong—just people we know fighting each other. It is a disturbing thought, and a scenario that for most of my life I viewed as having a zero chance of happening. But, life experience tells me that it surely can happen here. It can happen anywhere.

Political unrest can be the catalyst for it and the timing of this movie is impeccable. Former president Trump goes on trial Monday—a criminal jury trial in New York. However you feel about him, the idea of Donald Trump being handcuffed and carried away to Riker’s Island in 4-6 weeks, just months away from the presidential election where he is the overwhelming choice for Republican voters, will be an event that will enrage millions of citizens and delight millions of others; and if he is acquitted, millions will be outraged and millions of others will be delighted in reverse. I see very little ambiguity.

It depends on your perspective. I saw an exchange recently on the news where panelists asserted that if Trump was elected again it would be the end of democracy. RFK, Jr., responded that the end of democracy would occur if the

current administration allows the criminal justice system to persecute and neutralize its main political rival. View it how you like.

Is *Civil War* about the end of the career of an aging photojournalist forced to rethink her world? Yes. A young photojournalist's journey into the crucible of the world she seeks to capture on film? Also, yes. A dystopian vision of something that could happen in America? Yes. A cautionary tale of imperial hubris and a scenario by which it is leveled? Just a good movie to enjoy on a weekend with some popcorn? It is all of these things, depending on what the viewer sees, which I suppose is what art is all about.

Go see it.

VICTORIES

JARROD STEVENSON, OKC, scored yet another jury trial acquittal for a client accused of Domestic Abuse. The link goes to an article with a nice story and photo Jarrod and the client. Great job, Jarrod!

PIERRE ROBERTSON & GREG GRAVES, Tulsa County PD, secured a 30-minute verdict in a case involving two counts of Pointing a Firearm and Threatening an Act of Violence. This was Pierre's first felony jury trial! Good job, Pierre and Greg!

HEARSAY

CLEARED: Hundreds of active warrants have been cleared at an event in Oklahoma County.

SCAMMED: Scammers tried to steal funds from the Oklahoma County Jail.

RESPONSE: DOC responded to a story about the Oklahoma County Jail daily reimbursement rate being \$66.49 by noting that only 7 of the 136 Oklahoma County Jail inmates sentenced to prison have a valid J&S and are ready for DOC transport. **District Judge Natalie Mai** had set the daily reimbursement rate at \$66.49, but the DOC only pays \$27.00.

FLOCK: The City of Edmond wants even more Flock cameras installed to read license plates.

PHONES: “The Appeal” reports that Securus, which provides telecom services to many prisons, is on the verge of bankruptcy.

CASHLESS: The Turner Turnpike will officially go cashless on May 1, 2024.

POSTPONED: The Stephens County Sheriff has announced that he is postponing his retirement until June.

ROUNDUP: Nondoc has an informative legal roundup of updates from around the state.

WACKY CRIME

WISDOM: When you have an outstanding warrant...do not ask the police of a ride.

WISDOM II: Do not throw open cans of beer at moving Stillwater police cars.

DISMISSED: Pottawatomie County Judge Tracy McDaniel has dismissed a protective order...against a 9-year-old boy.

TULSA: A Tulsa man was on his way to the laundromat, driving his Toyota Camry...at 107 mph.

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