

OCDW 04.18.22

Category

O • C • D • W

OKLAHOMA CRIMINAL DEFENSE WEEKLY

www.ocdw.com

04.18.22

[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. Rutledge](#), 2022 OK CR 8 & 2002 OK CR 7 (April 14, 2022): **Domestic Abuse**: In this Domestic case out of Custer County, the State sought to enhance to a felony because of a prior for Assault and Battery w/Dangerous Weapon. The Hon. Donna L. Dirickson, Associate District Judge, granted a demurrer finding that the victim was an intimate partner but that the prior could not be used to enhance because it was not a conviction for domestic abuse. The Hon. Lance Schneiter affirmed. In this opinion, the Court reversed, construing the statute to allow this. **NOTE**: This was issued as an unpublished Summary Opinion, but in 2022 OK CR 7 the State moved to publish the opinion, which the Court granted.

[Jesus LaLacios Rubio v. State](#), No. F-2020-837 (Okla. Cr., April 14, 2022) (unpublished): **Prosecutorial Misconduct (Vouching)**: Rubio was convicted by jury in Oklahoma County (the not-so-honorable Timothy R. Henderson, presiding) of several counts including Kidnapping and Domestic Abuse. He raised a single claim that police witnesses usurped the role of the jury by vouching for the credibility of the complaining witness that she was truthful and that Rubio was untruthful, including one officer who testified that she spoke to the complaining witness in Spanish and that it is easier to tell whether someone is truthful in that language by the tone. The Court affirmed, holding that the objected-to portion was sustained which cured any error, and the other incident was harmless on plain error review. NOTE: Judge Rowland, P.J., concurred in result, finding the “Spanish language” testimony particularly dubious. Judge Lewis joined.

[Michaela Riddle v. State](#), No. F-2020-225 (Okla. Cr., April 14, 2022) (unpublished): **Speedy Trial**: Riddle was convicted by jury in Tulsa County of multiple counts including Murder in the First Degree (the Hon. Sharon K. Holmes, presiding). The Court affirmed, but the discussion of a speedy trial claim is instructive (and also shows how difficult these claims are to succeed).

[State ex rel. Oklahoma Bar Association v. George](#), 2022 OK 34 (April 12, 2022): A “long-time” member of the Bar wrote a scathing and disrespectful letter to the judges of the Tenth Circuit concerning a decision that they had issued in a habeas case. The Circuit issued a private reprimand. The Oklahoma Bar pursued discipline here, but the Court dismissed without imposing any discipline.

TENTH CIRCUIT

[United States v. Tony Lamar Burris](#), No. 19-6122 (10th Cir., March 30, 2022) (Published) (Matheson, Phillips & Moritz) (W.D. Okla., the Hon. David L. Russell, presiding): **First Step Act**: Denial of relief is reversed where the district court denied relief without conducting a calculation of the revised Guidelines range before exercising discretion to deny relief. NOTE: These cases are good examples of how the federal system is designed to incarcerate as many prisoners as possible for as long as possible. The Fair Sentencing Act was designed to alleviate disparities in sentencing, and the First Step Act made *that* Act retroactive—and the federal courts and federal prosecutors still resist any reductions; and the Courts of Appeals have been a mixed bag at giving direction in this regard.

[United States v. Sutton](#), No. 20-7028 (10th Cir., April 5, 2022) (Published) (Bacharach, Moritz & Eid) (E.D. Okla., the Hon. Ronald A. White, presiding): **Witnesses; Sufficiency:** Sutton and another prisoner thought that another prisoner had snitched on them and an altercation ensued. Both were charged with conspiring to tamper with a witness in a federal proceeding. The split panel reversed, holding that the evidence was insufficient to show that either contemplated tampering with a witness in a federal proceeding since they thought the witness was for a state proceeding. NOTE: Judge Eid dissented.

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

[Lynel Witherspoon v. Donnie Stonebreaker, Warden](#), No. 19-7276 (4th Cir., April 8, 2022): **IAC:** Habeas winner on an IAC claim in a drug case involving a controlled buy where the jury asked for surveillance stills and for the accused to stand next to an enlarged image. The panel held IAC in counsel’s failure to object to the “stand-up” order.

[United States v. Bithomas Ceasar, Jr.](#), No. 21-20163 (5th Cir., April 6, 2022): **Insanity & Competency:** In this child porn case, Ceasar was declared incompetent and sent for treatment, at the conclusion of which he was declared competent to stand trial. However, he later became incompetent again. The question was whether the district court had authority for another round of treatment or civil commitment. The panel held that the district court could order a second period of competency restoration treatment.

VICTORIES

None noted.

HEARSAY

LAWSUIT: A lawsuit against the Canadian County Sheriff alleges terminations were used to suppress whistleblowers.

COURTHOUSE: Canadian County Commissioners believe that the county needs a new courthouse.

JOHNS: OKC PD arrested 17 persons in a prostitution sting.

CANDIDATE: David Hammer has announced his candidacy for District Attorney for Lincoln and Pottawatomie counties.

CANDIDATE II: Long-time Assistant District Attorney Will Drake has announced his candidacy for District Attorney for Washington and Nowata counties.

CONVICTED: A Kay County correctional officer has been convicted of abusing inmates, and was also apparently part of a white supremacist organization.

GRADY COUNTY: The Grady County Courthouse had been closed for a while because a construction company disturbed some asbestos. The company has since been fired.

REFORM: Former Judge James Bland says that the bill “reforming” the state judicial system will make it even more political.

TULSA COUNTY: The Tulsa County Public Defender’s Office is back in the Tulsa County Courthouse.

REJECTED: Ousted Oklahoma County District Judge Kendra Coleman’s attempt to file for judicial office has been rejected.

A FIRST: For the first time in his judicial career, District Judge Barry Denney (Delaware County) has issued arrest warrants for folks who failed to show up for jury duty.

WACKY CRIME

BRYAN COUNTY: A property surveyor says that road-side dumping in Bryan County is the worst he's ever seen.

HUGGY-WUGGY: Sheriff's Office sends warning to parents about controversial huggy-wuggy videos, prompting Mark Hoover to posit: Huggy-Wuggy wasn't very Huggy, was he?

TULSA: A Tulsa man claims that he has become a U.S. Marshal...because President Trump enacted martial law.

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: ©2005-2022 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.