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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

[Jackson v. State](#), 2024 OK CR 11 (April 18, 2024): **Racketeering; Gang-Related Activity**: Jackson was convicted by jury in Cleveland County (the Hon. Michael D. Tupper, presiding) of Racketeering and other crimes, apparently related to gang activity. The Court affirmed over several claims, most of which were unpreserved, but it appears this case was published because the trial court denied a lesser-offense instruction on the crime of gang-related activity under 21 O.S. 856.3. The Court characterized this statute as more of a penalty enhancement, not a lesser included offense, and found no error. NOTE: Judge Hudson specially concurred to address the scope of the gang-related offense.

[Posey v. State](#), 2024 OK CR 10 (April 18, 2024): **Double Jeopardy; Evidence (Burks Notice & Bad Acts); Witnesses (Material Witness); Jurors; Motion for New Trial**: Capital murder case out of Canadian County is affirmed over claims related to: 1) Double Jeopardy/merger based on general verdict forms when he was charged alternatively; 2) admission of other crimes evidence (disturbing discussion since Posey had been acquitted of the prior “crime”); 3) unlawful warrant for a material witness (no standing); 4) jury selection issues in removing seven jurors for cause; 5) *Batson* issues; 6) jury instruction error because the felony murder instruction was incomplete because it omitted the alternative grounds; 7) second stage jury instructions and aggravating circumstance instruction (great risk of death); 8) sufficiency of aggravators (great risk of death invalid, but the Court reweighed); 9) IAC; 10) denial of motion for new trial based on newly discovered evidence (dismissed as untimely). NOTE: Judge Lumpkin concurred in result.

TENTH CIRCUIT

[United States v. Rick Q. Wilson](#), No. 23-2073 (10th Cir., April 15, 2024) (Published) (Hartz, Phillips & Carson): **Subpoenas**: In this case involving the prosecution of a psychologist for over prescribing painkillers, the DEA issued an administrative subpoena for his medical, prescription and billing records. Wilson lodged objections, but in this opinion the panel granted the petition of the Government to enforce compliance. NOTE: Judge Hartz concurred, but questioned whether the majority should have even considered the “required-records” exception.

[United States v. John William Flechs](#), No. 22-5088 (10th Cir., April 19, 2024) (Published) (Matheson, Bacharach & Moritz) (N.D. Okla., Hon. Claire V. Eagan): **Jury Instructions (Grooming); Sufficiency**: Conviction for Attempted Enticement of a Minor is affirmed over claims related to: 1) sufficiency of the evidence; and 2) jury instruction on the definition of “grooming.” NOTE: Judge Bacharach 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).

[McIntosh v. United States](#), No. 22-7386 (U.S., April 17, 2024): **Forfeiture:** In this Hobbs Act robbery case, the district court failed to issue a preliminary order of forfeiture under Fed. R. Crim. Proc. 32.2, but issued a final order after trial. The Court held that failure to comply with the Rule does not bar the forfeiture order at sentencing, subject to harmless-error principles.

VICTORIES

None noted this week.

HEARSAY

TAKEOVER: Tulsa police stopped a street takeover.

COMFORT: The Stephens County District Attorney has a comfort dog for children testifying in court.

BOOKS: An OKC woman is donating books to jails around the state.

DOC: DOC is litigating the re-instatement of unlawfully dismissed employees. Also, DOC is **being sued** again.

DAC: Rep. Justin Humphrey says that the DAC is committing money laundering by taking supervision fees but not providing supervision services. Also, DOC says the **Rep. Humphrey** is engaging in “hateful rhetoric.”

DOGS: Two dogs in Oklahoma have been trained to sniff out electronic storage devices (phones, hard drives, etc.) Troubling development.

ARRESTED: The Ponca City Fire Marshal has been arrested for violation of a VPO.

MISSED: Six OKC police officers opened fire on a man pointing a gun...and all of them missed.

RAISE: Deputies in Tulsa County have received a significant pay raise.

THIEVES: Thieves are cloning keys to steal cars directly from dealerships.

MCCURTAIN COUNTY: One year later, McCurtain County remains in turmoil.

FAIL: The Rogers County Jail has failed an inspection by the Department of Health.

CHOPPER: The Tulsa P.D. has unveiled its shiny new \$5 million helicopter.

DRUGS: Drug offenders charged with fentanyl-related crimes in Payne County have a slim chance of ending up in drug court.

ARRESTED: An 18-year-old has been arrested after a hit-and-run involving a Trooper in Tulsa.

GHOSTS: The Lawton P.D. is considering revamping its policies because of the use of a ghost gun in a shooting.

A.G.: Update on the event that occurred outside the A.G.'s Office. Original story **HERE**.

LIST: The JNC has published the list of applicants for the judicial position in Lincoln County caused by the resignation of Traci Soderstrom.

POSITIVE NEWS: Inmates leaving the Bill Johnson CC in Alva have a low rate of recidivism.

SHIELDS: Riot shields have been donated to the School Resource Officers at the Bartlesville High School.

WACKY CRIME

TULSA: The City of Tulsa is in the midst of a serial...pizza truck burglar.

TULSA II: A Tulsa man threw a pickaxe at an Animal Control vehicle.

OKC: A man in OKC went onto the porch of a home to steal...the doorbell camera.

PIEDMONT: The City of Piedmont had to abandon efforts to raise a "Pothole Posse" because of public outcry.

ALLITERATION: From The Chronicle: Clown Mask and Cocaine Converge for Caddo County Robbery.

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