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OKLAHOMA CRIMINAL DEFENSE WEEKLY

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[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

[Norman v. State](#), 2023 OK CR 4 (April 20, 2023): **Interrogations (Fifth Amendment); Evidence (Spoliation); Sufficiency**: Norman was convicted by jury in Tulsa County (the Hon. Michelle B. Keely, presiding) of Child Sexual Abuse. The Court affirmed over claims related to: 1) *Miranda* violation because he was question while in jail on unrelated warrants (thus, the fiction that he was not in custody for *Miranda* purposes); 2) spoliation of evidence (surveillance video that was supposed to be copied but did not copy onto media); and 3) sufficiency. NOTE: Judge Lewis Specially Concurred.

[Richard Eugene Glossip v. State](#), 2023 OK CR 5 (April 20, 2023): **Death Penalty**: Death row prisoner Glossip sought another post-conviction application based on

newly discovered evidence, but was joined this time by the Attorney General who agreed to a new trial and a stay of execution. Even so, the Court disagreed, denying relief and a stay of execution. NOTE: Justice Winchester sat by designation.

[Jason Enrique Arce v. State](#), No. F-2021-1212 (Okla. Cr., April 20, 2023) (unpublished): **Jury Instructions (Lesser Included)**: Arce was convicted of First Degree Murder and other crimes in Tulsa County (the Hon. Michelle B. Keely, presiding). The Court affirmed, but I included the opinion because Judge Lumpkin inserted footnote 3 which is his personal preference for the lesser-included analysis, but Judge Musseman and Vice-Presiding Judge Hudson rebuked this footnote as “unnecessary, and ultimately harmful” and as the “counter-precedential preference of the author” because it would simply obscure and confuse the test under *Shrum*.

[Kimberly Graham v. Hon. Tracy Priddy](#), No. PR-2021-1332 (Okla. Cr., April 18, 2023) (unpublished): **Jurisdiction (Appellate)**: This is another order denying extraordinary relief where a district court had granted relief in post-conviction under *McGirt*, the State did not appeal, but months later filed a motion to vacate out of time under *Matloff* (holding *McGirt* not retroactive). NOTE: This opinion and the others like it are an embarrassment.

[Phillip Lamont Morgan v. State](#), No. F-2021-460 (Okla. Cr., April 13, 2023) (unpublished): **Evidence (Hearsay): Accomplice Liability**: Morgan was convicted in Tulsa County (the Hon. William J. Musseman, presiding) of Murder in the First Degree. The Court affirmed over claims related to: 1) improper hearsay (error but harmless), and also no Confrontation error because the statements were not testimonial; and 2) accomplice testimony (must be corroborated).

TENTH CIRCUIT

[Brenda Evers Andrew v. Tamika White, Warden](#), No. 15-6190 (10th Cir., March 21, 2023) (Published) (Hartz, Bacharach & Phillips) (W.D. Okla., Hon. David L. Russell): **Habeas Corpus (Capital Habeas Cases)**: This is a sprawling opinion affirming the denial relief for female death row inmate Brenda Andrew in Oklahoma over claims related to: 1) use of evidence related to her sex life; 2) right to present a defense; 3) Brady violations; 4) Miranda issues; 5) admission of hearsay statement in a police report violated Confrontation; 6) penalty-phase

prosecutorial misconduct; 7) IAC re evidence; 8) IAC trial/appellate counsel regarding extradition treaty with Mexico; 9) sufficiency of HAC aggravator; and 10) cumulative error. NOTE: Judge Bacharach dissented, concluding that cumulative error warrants reversal, and that vacatur of the death penalty would be warranted in any event based on unresolved factual errors. There is an interesting IAC claim because Andrew was vacationing in Mexico at the time she was charged and could have negotiated the death penalty off the table because Mexico would not have otherwise extradited her back to Oklahoma.

[United States v. Steven O'Neil](#), No. 22-2000 (10th Cir., March 17, 2023) (Published) (Carson, Ebel & Rossman): **Eyewitness ID; Search and Seizure (Inevitable Discovery)**: Felon-in-possession conviction is affirmed over claims relating to: 1) eyewitness identification as unreliable; and 2) application of “inevitable discovery” to an inventory search.

[United States v. Neoal Guyeal Hayes](#), No. 22-8010 (10th Cir., March 17, 2023) (McHugh, Baldock & Briscoe): **Search and Seizure (Traffic Stops; Drug Dogs)**: Traffic stop search and seizure is affirmed over several Fourth Amendment claims, including exceeding scope/duration of traffic stop to get drug dog on the scene. NOTE: Judge Briscoe concurred, concluding that police had probable cause the entire time.

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).*

[Halkbank v. United States](#), No. 21-1450 (U.S., April 19, 2023): **Jurisdiction**: A Turkish bank was indicted for conspiracy to evade U.S. economic sanctions against Iran. The issue is whether the general criminal jurisdiction of the district court under 18 U.S.C. 3231 includes instrumentalities of a foreign state. It does.

[Reed v. Goertz](#), No. 21-442 (U.S., April 19, 2023): **Civil Rights; Statute of Limitations**: Texas prisoner seeking review of the Due Process in state court denying him access to evidence for DNA testing filed a 1983 action. The issue is whether the two-year statute of limitations runs from the date that the state trial

court denied the motion or from the date that state litigation ends which includes appeal. Held: it runs when the state litigation ends (here, when the Texas Court of Criminal Appeals denied rehearing).

OTHER CASES OF NOTE

[United States v. Rodney P. Gemar](#), No. 21-30666 (5th Cir., April 19, 2023):

Jurors: A law enforcement officer was convicted of stealing property from arrestees. The panel remanded for an evidentiary hearing on his claim of juror bias (a juror knew Gemar's wife but had not disclosed it).

[United States v. Felicia Munoz](#), No. 22-10451 (5th Cir., April 17, 2023): **Waiver (Appeals Waiver):** The appeals waiver in this case does not bar challenge to a restitution order.

[United States v. Christian Ferguson](#), No. 21-3800 (6th Cir., April 20, 2023):

Sufficiency: Convictions for attempted kidnapping are reversed for insufficient evidence. NOTE: Judge Bush dissented.

VICTORIES

[ADAM HASSELGREN & ALEX BRAMBLETT](#), Tulsa County PD, won a first degree murder trial in Tulsa, and Judge Holmes also granted demurrers for two other shooting-related offenses. Incredible result, Adam and Alex!

[LISA PEEBLES](#) won an acquittal in federal court for Krebs native Devin Sizemore in a murder case in Indian Country. I am unsure from where Lisa originates, but she apparently knows how to try a case. Nice work!

HEARSAY

[GARFIELD COUNTY](#): Issues with the personal property of inmates at the Garfield County Jail has resulted in non-renewal of the housing contract.

INMATE DEATH: Another inmate has died at the Oklahoma County Jail; and **another**.

MCGIRT: A Tulsa woman released on a McGirt claim has been ordered back to prison after the OCCA upheld the State's out of time motion to vacate post-conviction relief (this is the *Graham* case featured above).

EDUCATION: DOC touts helping some inmates earn high school diplomas.

MCCURTAIN COUNTY: Officials in McCurtain County are in hot water for making comments about killing journalists and racist comments. Local residents are worried about the **negative publicity**.

TRIBAL COURT: Kiowa Tribal Court opened in January.

ATF: The BATF is increasing the number of agents in Oklahoma to combat gun theft, illegal gun sales, and gun violence.

APPLICANTS: Here are the names of the applicants for the district judge spot in District 3 (far SW Oklahoma including Jackson and Tillman Counties).

SECURITY: Officials in Woods County want to beef up security at the courthouse, although no specific threats or incidents were mentioned.

MURDER WAS THE CASE: Oklahoma County District Attorney Vicki Behenna moves to vacate a 1974 murder conviction.

PHONE ISSUES: The Craig County Courthouse is experiencing phone issues.

READER: The City of Guthrie has deployed a Flock Safety license plate reader to combat serious crime.

ID: The OSBI has identified two bodies from a 1995 homicide near McAlester.

GANGS: Story of gang violence, but this at a women's prison at Mabel Bassett.

CHARGED: A Lawton elementary school employee has been charged with Assault and Battery...for hitting a student with a dodge ball.

ACCUSED: A now-former Edmond police officer has been accused of soliciting a 14-year-old.

DELIVERY: An OKC man used a fake Amazon delivery vehicle to ship tons of marijuana around the Metro.

WEED: OBN shut down an illegal marijuana operation that had stored three tons of weed in a warehouse.

ASSAULT: An inmate at LCF has been charged with assaulting a guard while high on meth and fentanyl.

WACKY CRIME

FISHING: A man in Johnston County has been arrested for hooking up a car battery...to catch fish. Mark Hoover says...shocking!

COWS: 18,000(!!) cows were killed in an explosion at a dairy farm in Amarillo.

NOTE TO SELF: Do not stay at the Plaza Inn Motel in OKC...police have been called there over 700 times in 15 months.

SPEED: A speeder near Pauls Valley was clocked at 122 mph; and a speeder caught by **Broken Arrow** police also was going 122 mph; and a woman was clocked at **135 mph on the Kilpatrick Turnpike**...because she was late for work.

TALKING: An OKC man has been sentenced to life imprisonment for shooting his wife...because she would not shut up.

CALL OF DUTY: Two men played Call of Duty but one had a real gun...and accidentally shot his friend.

THE FONZ: Actor Henry Winkler stopped in for some Italian food in Tahlequah.

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