

**OCDW 04.29.24**

Category



**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

*No relevant cases.*

## TENTH CIRCUIT

[United States v. Kendall Len Burgess](#), No. 22-7033 (10<sup>th</sup> Cir., April 23, 2024) (Published) (Carson, Baldock & Ebel) (E.D. Okla., Hon. Ronald A. White):

**Hearsay (Residual Exception); Evidence (Forensic Interviews):** Convictions of sexual assault against a child are affirmed where, when the child gave inconsistent

statements at trial, the trial court allowed introduction of the almost hour-long forensic interview, admitted under the residual exception to the hearsay rule.

## UNITED STATES SUPREME COURT

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“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

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[People v. Harvey Weinstein](#), No. 24 (N.Y. Ct. App., April 25, 2024): **Evidence (Burks Notice & Bad Acts)**: In this sharply divided set of opinions, the court reversed the convictions for sexual assault on the basis of the introduction of uncharged prior bad acts because the evidence served “no material non-propensity purpose.”

[United States v. Kyle Lamar West](#), No. 22-11001 (5<sup>th</sup> Cir., April 25, 2024): **Restitution**: Restitution order is vacated and remanded because the PSR cited inapplicable statutes and the district court failed to conduct a proximate-cause analysis.

## VICTORIES

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**DAN POND**, Norman, litigated what appears to be voodoo pseudoscience in Garvin County concerning a procedure called a “Shake Test” where officers take cash suspected as drug proceeds, hold the cash over paper, shake it, and then when any amount of drug is detected they keep the cash. This has become a common occurrence in District 21, so Dan litigated it in front of Judge Leah Edwards, who issued an [ORDER](#) on April 23, 2024, concluding that the “Shake Test” is novel

and the State failed to demonstrate whether expert opinion was based on sufficient facts or data and also that the novel science was the product of reliable principles and methods, and that the witnesses relied on those principles and methods.  
Motion to suppress GRANTED. Great work, Dan!

## **HEARSAY**

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**SWAT**: The OU campus police have a procedure for “swatting” calls.

**RETIRED**: The Woods County Sheriff has announced his retirement.

**SHAKEDOWN**: A shakedown at James Crabtree CC turned up contraband.

**OKARCHE**: The Okarche Chief of Police has been fired and the City Attorney has resigned.

**DISMISSED**: A motion to dismiss in a murder case out of Woodward County has been granted on a speedy trial claim. The motion was filed by attorney Becky Barney and the State is appealing.

**DISMISSED II**: A Manslaughter case out of Payne County has been dismissed by the ADA because of “conflicting witness statements.” Defense counsel was Jodie Gage.

**85% RULE**: A bill that would have made Accessory to Murder an 85% crime has died in the senate.

**EXECUTION**: A.G. Drummond has filed a brief with the Supreme Court to stop the Glossip execution.

**TURNPIKE FEES**: The Turner Turnpike will go cashless effective May 1, 2024. The Plate Pay cost of traveling the turnpike will increase from \$5 to \$8.75 each direction effective the same day.

**GOOD SENTENCE**: A Bryan County man convicted of possessing child porn at a bench trial has been sentenced by Judge Mark Campbell to five years with all but the first 60 days in the county jail suspended.

**CLOSE LOOK**: The Marshall Project looks at an Oklahoma law designed to help women who killed their abusers.

**NEW CHIEF**: The City of Mustang has a new Chief of Police.

**LAST MEAL:** Odd story examining the last meals of executioners in North Carolina before carrying out death sentences.

**MEETING:** State Rep. Justin Humphrey held a public meeting to discuss allegations of abuse with the DOC.

## **WACKY CRIME**

**VANDALS:** Three men in Tahlequah have been arrested for starting more than 20 fires and vandalizing fire hydrants across three counties.

**TULSA:** A Tulsa man who is old enough to know better has been arrested for using fireworks to blow up his neighbor's mailboxes.

**MOORE:** A Moore police officer assisted a family of geese across the street.

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