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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

[Jared Michael Spears v. State](#), No. C-2022-594 (Okla. Cr., May 16, 2024) (unpublished): **Guilty Pleas; Indians**: In this guilty plea case out of Rogers County, Spears raised a *McGirt* claim as a basis to withdraw his plea and the district court (Hon. J. Dwayne Steidley) denied his motion. In this opinion, the Court affirmed, continuing to construe “subject matter jurisdiction” under *McGirt* as something other than the subject matter jurisdiction we all learned in law school. NOTE: Judge Lewis and Judge Hudson dissented.

[In Re: The Setting of Execution Dates in \[Multiple Inmates\]](#), No. D-2005-310 (Okla. Cr., May 7, 2024): Expansive order setting execution dates and protocols for 17 death row inmates, including 90-day intervals and executions on Thursdays.

NOTE: Judge Lumpkin concurred in part/dissented in part, mainly to the 90-day delays between executions. Judge Lewis concurred in results.

TENTH CIRCUIT

[United States v. Lyndell Daniels](#), No. 22-1378 (10th Cir., May 8, 2024) (Published) (Eid, Seymour & Kelly): **Search and Seizure (Reasonable Suspicion)**: Grant of a motion to suppress based on lack of reasonable suspicion is affirmed in this case where police were called to an apartment complex based on a call of suspicious but not criminal activity. NOTE: Judge Eid concurred in the judgment.

[Kimberly Graham v. Tamika White, Warden](#), No. 23-5069 (10th Cir., May 17, 2024) (Published) (Tymkovich, Matheson & Bacharach) (N. D. Okla., Hon. Claire V. Eagan): **Indians**: In response to *McGirt*, the OCCA spawned a series of species and unserious jurisprudential gaffes, first applying subject matter jurisdiction in a way that we all learned in law school, but then retreating from that, applying non-retroactive rules to subject matter jurisdiction, which resulted in post-conviction grants of relief, followed by district courts un-granting relief in cases where the State never appealed the grants of relief. This happened to Graham, and the federal district court held that there was a denial of Due Process in all of it. Here, the panel reversed, applying equally unserious modern habeas rules under the AEDPA that preclude federal courts from granting relief when a state court has screwed up but not enough to be outright in violation of a published Supreme Court case that is directly on point. NOTE: Defense lawyer [Richard O'Carroll](#) commented to the media.

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).*

[Culley, et al., v. Marshall](#), No. 22-585 (U.S., May 9, 2024): **Forfeiture:** As a matter of constitutional law, a civil forfeiture case involving personal property, a car in this case, the Due Process clause requires a timely forfeiture hearing, but does not require a separate preliminary hearing.

OTHER CASES OF NOTE

[United States v. Steven Duarte](#), No. 22-50048 (9th Cir., May 9, 2024): **Second Amendment:** Conviction for felon-in-possession of firearm is vacated on Second Amendment grounds as applied to a non-violent offender who has served his time.

VICTORIES

TOMMY ADLER & JOEY DEGIUSTI, OKC, argued successfully a motion to quash on the eve of trial before Judge Stallings in Oklahoma County in a case involving an allegation of Harboring a Fugitive. All offers rejected, but case dismissed. Great work, Tommy & Joey!

RHYDER JOLIFF, WILLIAM WIDELL, NEIL VAN DALSUM & BRIAN DEER, represented a client in the Eastern District accused on First Degree Murder and Second Degree Murder. Not guilty on all counts. The defense was self-defense and I am informed that William's cross-examination of the case agent was an exceptional work of advocacy. This was Rhyder's and William's second not guilty trial in a row. Nice work, Rhyder, William, Neil & Brian!

HEARSAY

[DEAN:](#) The O.U. College of Law has a new Dean.

[CUTS:](#) As a result of budget cuts at the Cleveland County Sheriff's Office, an unspecified number of deputies have been reassigned to the county jail.

[NIXED:](#) Officials in McClain County have nixed a proposal to jointly operate a new county jail with Garvin County.

STATS: If a person is strangled during a domestic relationship, then that person is 750% more likely to be killed by the person who strangled them.

DOC: Tulsa news KRMG noted a “rough week” had by the DOC.

ARRESTED: A Durant police officer has been arrested for DUI.

ARRESTED II: A Deputy Warden has been arrested for bringing in contraband at LARC.

BONNIE & CLYDE: Interesting Bonnie & Clyde story out of Texas.

EXECUTION: The OCCA has set a late June execution date for Richard Rojem. Also, **Wade Lay** has been ruled incompetent to be executed.

CRIME: Person-on-person crime has doubled in the last five years in Oklahoma.

NEW CENTER: The Cherokee Nation has broken ground on its new Public Safety Center. Also, the Cherokee Nation is pushing Congress to redefine Indian status under the **Major Crimes Act**.

NEED: Oklahoma City is apparently in need of child/adolescent psychiatrists.

CHARGED: The Pittsburg County Sheriff has been charged with felony embezzlement.

ADMIN: The Court will replace Jari Askins as Administrative Director.

ARRESTED: A suspect has been arrested in a large auto theft ring in Tulsa.

FIRE: The Police Chief in Kingston has been fired, and already replaced.

SUED: A woman is suing GEO, claiming that she and her two kids were caught between two inmates fighting at LCF when staff blasted pepper spray.

CAMS: DOC correctional officers will start wearing body cams soon, but officers at LCF will not.

OSBI: NonDoc covers some of the battles the OSBI has been fighting both internally and externally.

COMMENT: Rep. Justin Humphrey commented on a large scale disturbance at LCF.

SALARIES: Legislators are looking at setting minimum salaries for sheriffs and jailers.

DRUGS: The article covers a large seizure of drugs in OKC.

INTERVENTION: DOJ is intervening in the Muskogee Tribe v. Tulsa case.

COLD CASE: The skeletal remains of “Chimney Doe” found in the chimney of a music store in Madison, WI, in 1989, have been identified as a Tulsan.

RELEASE: Gov. Stitt has signed a bill which will help inmates develop work skills upon their release.

ARRESTED: Two UPS employees have been arrested for stealing items from packages in OKC.

NO RODEO: DOC has halted its request for \$8.3 million in funding for the OSP rodeo.

FUNDS: Oklahoma tribes are lobbying for public safety funds from Congress.

ARRESTED: Long but interesting article in Oklahoma Voice examines the fifth person arrested in the Texas County murders of two women.

INDICTED: Garfield County judge Brian Lovell has been indicted for drive-by shooting.

MOLD: Mabel Bassett has a mold problem.

WACKY CRIME

RINGLING: A burglary in Jefferson County described as a “Goldilocks and the Three Bears” caper.

STREAM: Two juveniles were caught stealing a car in Midwest City...while they were live-streaming the crime.

TULSA: A car crash in Tulsa was caused by...a Chihuahua.

STALKER: A man traveled from France...to stalk ventriloquist Darci Lynne Farmer.

PRANK: A senior prank went sideways at McArthur High School.

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