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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

[Krystyana Carter v. State](#), No. F-2022-40 (Okla.Cr., May 18, 2023) (unpublished): **Maiming**: Carter was convicted by jury in Oklahoma County (the Hon. Amy Palumbo, presiding) of the crime of Maiming. The Court affirmed, but I included the opinion because it contains discussion of the elements and examples of this crime.

[State v. Bobby Don Sharrock](#), No. S-2022-908 (Okla.Cr., May 18, 2023) (unpublished): **State Appeals; Search and Seizure (Stale Information)**: Sharrock was charged with Trafficking in Johnston County. The Hon. Wallace Coppedge granted a motion to suppress based on stale information in the affidavit and the State appealed. In this opinion, the Court reversed, finding that the

information was not stale and that judge Coppedge should have considered *Leon*. NOTE: The Court criticized defense counsel for failing to present evidence in support of the motion to quash by arguing that testimony in a related case showed that authorities surveilled the residence for over two months and saw no illegal activity. The Court stated that the argument by counsel was not evidence, and presumable defense counsel should have presented the actual testimony. I would bet that the State and the trial court accepted this assertion as true and no one objected to it at the hearing, but on appeal the Court used the lack of a record against the defense instead of finding that the State acquiesced to it. This is the typical type of “gotcha” argument that the Court uses. The lesson is that best practice is to introduce the evidence at the hearing or obtain a stipulation.

[Melvin Lawrence Porter v. State](#), No. F-2021-645 (Okl.Cr., May 25, 2023) (unpublished): **Speedy Trial; Peremptory Challenges; Evidence (Opinion Testimony)**: Porter was convicted of felony First Degree Murder in Tulsa County (the Hon. Clifford Smith, presiding). The Court affirmed but the opinion contains good law and discussion of Speedy Trial, a *Batson* challenge, and the Court found error in the opinion testimony of a police officer witness but deemed it harmless.

[Byron Scott Bennett v. State](#), No. F-2021-966 (Okl.Cr., May 18, 2023) (unpublished): **Evidence (Rebuttal)**: Bennett was convicted by jury in Osage County (the Hon. Burl O. Estes, presiding), of Lewd Molestation. The Court found error when the State called witnesses in rebuttal after Bennett had taken the stand. The Court held that the State could cross-examine him about prior acts but could not call actual witnesses to introduce extrinsic evidence of those earlier acts, but the error was harmless in this case.

TENTH CIRCUIT

[United States v. Russell Garvis Griffith, Jr.](#), No. 22-7005 (10th Cir., April 18, 2023) (Published) (Hartz, Baldock & Bacharach) (E.D. Okla., Hon. Ronald A. White): **Evidence (Opinion Testimony)**: In this child sex abuse case, the panel found error in the Government’s two police expert witness testifying about the credibility of the accused, but denied relief on plain error review.

[United States v. Michael Otis Hunsaker, Jr.](#), No. 22-7016 (10th Cir., April 18, 2023) (Published) (Hartz, Baldock & Bacharach) (E.D. Okla., Hon. Ronald A. White): **Federal Sentencing Guidelines (Leader or Organizer)**: In this guilty

plea drug case, enhancement of the sentence for “manager or supervisor” is reversed.

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

[In re: Randolph Lee McNeill](#), No. 20-159 (4th Cir., May 22, 2023): **Habeas Corpus**: Interesting opinion on McNeill’s motion for authorization to file a second/successive 2255 petition based on *Rehaif*. The panel denied authorization, but did authorize him to file a traditional 2241 habeas application through the savings clause of 2255(e).

VICTORIES

JESSE MUTH & MARK SCHANTZ, Vinita, won a not guilty verdict in Nowata County for a client charged with Burglary in the Second Degree. The jury was out all of 25 minutes. Nice job, Jesse and Mark!

ANDY CASEY & RYAN LOEWENSTERN, OKC, won a not guilty verdict in Payne County for a client accused of Manslaughter. It was a grueling week-long trial in a self-defense case that ended well for the good guys. Great job, Andy and Ryan!

CHASE MCBRIDE, Pryor, secured an acquittal for his client who had been accused of First Degree Murder and also not guilty of lesser offenses stemming from a shooting of two men at a bar in Bartlesville. Great work, Chase!

AWARDS: The OCDLA Annual Awards have gone to: Royce Hobbs (Stillwater) who received the Lord Erskine Award; Shea Watts (OIDS Capital Trial Unit, Norman) who received the Clarence Darrow Award; and Ariel Parry (OIDS, Norman) who received the Thurgood Marshall Appellate Advocacy Award.

Also, the winner of the Jack Dempsey Pointer Champion for Justice Award is Corbin Brewster (Tulsa County Public Defender).

The President's Awards went to: Laura Deskin for her work in federal court on the 992/Bruen gun issue; Steve Lucas for his many years of service as an investigator for OIDS & private attorneys; and The Capital Trial Unit of OIDS for their zealous work this year.

Congratulations to all, very well deserved!

HEARSAY

CHARGED: A jailer in McAlester has been charged with sexually assaulting an inmate.

CHARGED II: The Oklahoma County District Attorney has filed a 59-count Information against a Newalla couple related to cockfighting.

100%: Detectives with the Tulsa Police Department have solved 100% of the homicides committed in 2023.

FOUR STRIKES: A fourth conviction for drug possession will now be a felony in Oklahoma.

LOCKDOWN: DOC has indicated that Dick Conner Correctional Center will be on lockdown indefinitely.

HISTORY: The Joplin Globe recounts a police shootout with Bonnie and Clyde in Joplin, MO, in 1933.

VULNERABLE: Oklahoma prisons are particularly vulnerable to fentanyl.

MOVE OVER: Failing to slow down/move over for emergency vehicles will now be a \$1,000.00 fine for a first offense, and \$2,500.00 for a second offense. Seems kind of harsh.

SCHOOLS: The Grady County Sheriff's Office will utilize deputies as School Resource Officers.

SUPPORT: Oklahoma death row prisoner Anthony Sanchez has support for his claim of actual innocence.

CRACKDOWN: The Pontotoc County DA is cracking down on registered sex offenders.

CONFLICT: A judge has been conflicted out of a hearing a manslaughter trial in Comanche County.

MORE TROUBLE: As if things were not bad enough in McCurtain County, a law enforcement officer there is in trouble for drawing a gun and making a racist comment.

CONSULATE: The Mexican Consulate in Oklahoma City is officially open for business.

JAIL DEATH: Jailers apparently neglected safety checks prior to the death of an inmate in the Cleveland County Jail.

TREATMENT: Cleveland County judge Hon. Michael Tupper presides over treatment court.

EVIDENCE: The Stillwater Police Department has lost a lot of evidence which will impact ongoing criminal cases.

CHANGES: The Director of DOC wants to implement changes as a result of the multiple homicide/suicide in Henryetta.

REPLACED: The Interim Harmon County Sheriff has been replaced a second Interim Sheriff.

PLATES: The City of Edmond is purchasing license-plate reading cameras.

VETO: Gov. Stitt has vetoed a bill that would have expanded the list of 85% crimes.

WACKY CRIME

PLATES: An Oklahoma meteorologist was pulled over in Texas because the officer claimed that her National Weather Center plate could not be read. NOTE: Mark Hoover says he has the same plate. Better stay out of Texas.

PIRATES: Oklahoma has the second-highest rate of porch-piracy in the nation...behind New Hampshire???

OVERFLOW: A business owner found her dumpsters overflowing...with breakfast burritos.

RUN DOWN: A Haskell County man attempted to run over a Choctaw Nation officer...with a riding lawnmower.

SALUTE: An officer in Oklahoma City is in trouble...for giving a citizen the middle-finger salute.

ARRESTED: A man with an unusual name has been arrested for airdropping photos of himself naked to strangers.

DATE: A blind date in OKC got all stabby and bitey.

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