

**OCDW 06.17.24**

Category

**O • C • D • W**

**OKLAHOMA CRIMINAL DEFENSE WEEKLY**

[www.ocdw.com](http://www.ocdw.com)

06.17.24

[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**

[Thomas v. State](#), 2024 OK CR 15 (May 30, 2024): **Guilty Pleas; Appellate Practice:** Guilty plea case out of Oklahoma County where Thomas misunderstood the appellate rules and thought he had 10 business days to file a motion to withdraw his plea instead of 10 calendar days. The Hon. Jason Glidewell denied his motion and in this opinion the Court agreed, clarifying the time frames for appellate deadlines in criminal cases (which are different than civil cases) and also clarifying operation of Rule 2.2 which allows supplementation of the record where no court reporter is present.

[Caudle v. State](#), 2024 OK CR 14 (May 30, 2024): **Demurrer:** Caudle was convicted by jury in Okmulgee County (the Hon. Lawrence W. Parish, presiding)

of Lewd Acts. He raised a single issue on appeal: whether the district court erred by overruling his demurrer because he was entrapped. The Court affirmed because he presented evidence in his defense which waived a demurrer; so, the Court treated his claim as sufficiency of the evidence and affirmed on that basis. NOTE: I am mystified at why the Court would publish this case.

[Nigel Christian Lewis v. State](#), No. F-2022-656 (Okla. Cr., June 6, 2024) (unpublished): **Double Jeopardy/Section 11**: In this case out of Rogers County, Lewis was convicted of multiple counts most of which were affirmed, but his convictions for both Possession of Firearm During Commission of a Felony and Possession of Firearm After Former Felony Conviction violated section 11.

[Randle et al. v. City of Tulsa](#), 2024 OK 40 (June 12, 2024): Survivors of the Tulsa Race Riot of 1921 sued the city on an odd theory of abating a nuisance. The district court dismissed and in this opinion the Court affirmed.

## **TENTH CIRCUIT**

---

[United States v. Joseph Allen Hernandez](#), No. 23-7024 (10<sup>th</sup> Cir., June 7, 2024) (Published) (Bacharach, Baldock & Kelly) (E.D. Okla): **Experts; Prosecutorial Misconduct (Vouching)**: As the result of a mobile home fire that resulted in two deaths, Hernandez was convicted of setting the fire intentionally. He defended on the basis that it was an accident. The Court affirmed over claims related to: 1) admission of fire investigator testimony as an expert; 2) testimony by the fire investigator that he had not believed the explanation of Hernandez (no plain error); and 3) whether the entry onto the scene by the fire investigator intruded on a reasonable expectation of privacy.

[United States v. Jose Luis Amador-Bonilla](#), No. 22-6036 (10<sup>th</sup> Cir., May 29, 2024) (Published) (Moritz, Seymour & Eid) (W.D. Okla.): **Immigration**: In this case involving Illegal Reentry after removal, the issue is whether the statute violates Equal Protection and Due Process. The panel affirmed denial of the motion to dismiss, siding with four circuits which have reached the same conclusion.

## **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**

---

[United States v. Gene Rudolph](#), No. 21-30739 (5<sup>th</sup> Cir., May 30, 2024): **Federal Sentencing Guidelines (PSR)**: Career Offender enhancement is vacated when the Government failed to prove the sentencing enhancement and the district court’s adopted facts lacked sufficient evidentiary basis.

[United States v. Dorian Deon McMullen](#), No. 23-3656 (6<sup>th</sup> Cir., June 7, 2024): **Search and Seizure (Reasonable Suspicion)**: Denial of motion to suppress is affirmed, but I included the opinion because of the strong dissent by Judge Moore, who excoriated the majority for essentially allowing the stop and search based on the high crime area and little else.

## **VICTORIES**

---

**KYLE KILLAM**, Tulsa County P.D., secured not one, not two, not three, but four not guilty verdicts for a client accused of four counts including Domestic A&B by Strangulation, Witness Intimidation, and Domestic A&B. Great work, Kyle!

## **HEARSAY**

---

**TRIBES**: OCU Law School has launched a Tribal Sovereignty Institute.

**APPOINTED**: A new Sheriff has been appointed in Woods County.

**JAILED**: An OU defensive back has been booked into the Cleveland County Jail.

**LEAVE**: Four police officers in Broken Arrow have been placed on administrative leave for misconduct.

**NAMES**: Residents of Tulsa have amusing names for the Tulsa Police Department helicopter.

**ARRESTED**: An Oklahoma man on the lam for 13 years has been arrested in the U.K.

**SUSPENSION**: Creek County District Judge Laura Farris has signed an order suspending the Pittsburg County Sheriff stemming from embezzlement and bribery charges.

**NEW WORD**: Apparently a new word has been coined describing people who claim Native American status when they have none: pretendians.

**FUNDS**: The Cleveland County Commissioners have bailed out the county Sheriff with a \$3.2 million supplemental appropriation.

**GANGS**: Multiple applicants for positions as Detention Officers with the Oklahoma County Jail are affiliated with gangs.

**JAIL**: Commissioners in Oklahoma County have voted to purchase 71 acres of land on East Grand Boulevard next to Del City for the new jail.

**BAR EXAM**: The Oklahoma Supreme Court has changed the bar exam for 2027 to the NextGen Bar Exam, whatever that is.

**THEFT**: Tulsa police say that gun theft is not slowing down.

**REPAIRS**: A homeowner Moore had his fence damaged during a police chase; so the officer involved and the community repaired it.

**CONCERN**: The Frontier has raised concerns about a New Jersey company that provides training to police officers.

**OPPOSITION**: The Oklahoma County District Attorney and the Attorney General have opposed a day pass for Christian Costello, who killed his father, Labor Commissioner Mark Costello, at a Braum's a few years ago.

**EMBEZZLEMENT**: A couple in Pryor have been charged with embezzling funds from their drug-rehab charity to spend on some odd things.

**NEW**: The OJA has opened a new counseling center in OKC.

**IMMIGRATION**: The Oklahoma County Sheriff says he will enforce the state's newly-enacted immigration bill.

**LEAVE**: A police officer in Broken Arrow is on leave after his conduct toward a suspect during an arrest for a parking violation.

**PAYMENT**: A current inmate at LARC paid a former inmate at LARC the might sum of \$100 to help him escape. Now, both are in custody.

**DELAY**: A woman claims that she had posted bond for her husband but had to wait 36 hours for the Oklahoma County Jail to release him.

**RESIGNED**: The Police Chief for the City of Kiowa has resigned.

**APOLOGY**: The Blaine County Sheriff has issued an apology to a man identified wrongly and arrested.

**DOMES**: A Quik Trip in Tulsa has some "3D printed anti-loitering domes" installed out front to deter loitering.

**UNEXPECTED**: A police sergeant in Oklahoma City has passed away.

**CHARGED**: A daughter has been charged in the death of her mother after providing a firearm used in the mother's suicide.

**DISCIPLINE**: Four DOC correctional officers face discipline for arranging the assault of an inmate.

**DENIED**: The Pardon and Parole Board has denied the early release of a mother convicted of allowing her husband to kill their child.

**ARRESTED**: A jailer at the Pontotoc County Jail has been arrested for bringing contraband into the jail.

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

## **WACKY CRIME**

**CADDO COUNTY**: A Caddo County man has been accused of setting fire to a building because he was angry.

**PSYCHIC**: A psychic in Edmond has been arrested for domestic assault...for which Mark Hoover observed that he apparently did not see it coming.

**TEETH**: According to the headline, an employee of a dental practice has been charged with extracting \$39,000.00 from her employer...get it...extracting.

---

## **OKLAHOMA CRIMINAL DEFENSE WEEKLY**

**SUBSCRIPTIONS AND SUBMISSIONS**: To subscribe to the *Oklahoma Criminal Defense Weekly* just send an e-mail to James L. Hankins at jameshankins@ocdw.com and include the e-mail address to which you want the issues to be delivered. I am sending out the issues for free now to whoever wants to receive them. Submissions of articles, war stories, letters, victory stories, comments or questions can be sent to Mr. Hankins via e-mail or you can contact him by phone at 405.753.4150, by fax at 405.445.4956, or by regular mail at James L. Hankins, MON ABRI BUSINESS CENTER, 2524 N. Broadway, Edmond, OK 73034.

**ABOUT THE OCDW**: The *Oklahoma Criminal Defense Weekly* is compiled, maintained, edited and distributed weekly by attorney James L. Hankins. Archived issues can be obtained by contacting Mr. Hankins directly, although some of them are on the web site at [www.ocdw.com](http://www.ocdw.com). OCDW accepts no money from sponsors. Mr. Hankins is solely responsible for its content. The OCDW web site is maintained by [Spark Line](#).

**COPYRIGHT STATEMENT & DISCLAIMER**: ©2005-2024 by James L. Hankins. All rights reserved. OCDW hereby grants free use of these materials for any non-commercial purpose provided that proper credit to the OCDW is given. In the event that copyrighted works are included in an edition of the OCDW such works may not be reproduced without the consent of the copyright holder because under federal law the OCDW has no authority to allow the reproduction of the intellectual property of others. For purposes that go beyond “fair use” of the copyrighted material under federal law, the permission of the copyright holder must be obtained. If you are a copyright holder and object to any portion of an issue of the OCDW, please contact the publisher, James L. Hankins, at the contact information above (located under the SUBSCRIPTIONS AND SUBMISSIONS section). Finally, the materials presented in this newsletter are for informational purposes only, and are not, nor intended to be, legal advice or to create an attorney-client relationship. You

should consult an experienced attorney licensed in your jurisdiction for legal advice applicable to the specific facts of your case. Cases are summarized in each weekly issue as they are issued and filed by the respective court, and are thus subject to being withdrawn, corrected, vacated, and/or modified or reversed without notice. Always conduct your own research!

**UNSUBSCRIBE**

If you have received this e-mail in error, or no longer wish to receive the weekly newsletter, simply reply to the message, or send a new message, to jameshankins@ocdw.com and type in "UNSUBSCRIBE" in the subject line, along with your name and e-mail address and you will be taken off the mailing list.