

OCDW 06.26.23

Category



OKLAHOMA CRIMINAL DEFENSE WEEKLY

www.ocdw.com

06.26.23

[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

[Christopher Lee Davis, Sr., v. State](#), No. C-2022-229 (Okl.Cr., June 22, 2023) (unpublished): **Guilty Pleas:** Nolo plea in Kay County is vacated because the accused was misadvised on the correct range of punishment.

[State v. John Mitchell](#), No. S-2021-880 (Okl.Cr., June 22, 2023) (unpublished): **State Appeals; Quash:** In this State appeal out of Kay County, a Blackwell police lieutenant was indicted for Manslaughter in the First Degree for an officer-involved shooting of a suspect. The Hon. Lee Turner granted a motion to quash and the State appealed. In this opinion, the Court affirmed, holding that there was no abuse of discretion because the objective facts showed that the use of force was reasonable.

[Howard Eugene Peeples, Jr., v. State](#), No. F-2022-406 (Okl.Cr., June 22, 2023) (unpublished): Peeples was convicted by jury in Tulsa County (the Hon. Michelle B. Keely, presiding) of First Degree Murder and Possession of a Firearm AFCF. The Court affirmed, but the opinion contains a good discussion of the issue of a challenge to the pre-trial but in-court identification of the accused at PH.

[Attorney General Opinion No. 2023-6](#) (May 10, 2023): **Insanity & Competency**: Interesting analysis from the Attorney General concerning whether persons in custody of the Department of Mental Health and Substance Abuse Services are entitled to counsel arising from recommendations made by the Forensic Review Board (yes), and whether OIDS can represent these persons (yes).

[Kimberly Graham v. Tamika White, Warden](#), No. 23-CV-164-CVE-SH (N.D. Okla., June 22, 2023): **Habeas Corpus; Indians**: This is an extraordinary opinion granting habeas relief to a state prisoner who had been granted relief in post-conviction under *McGirt* and then un-granted relief under *Matloff* after the time for the State to appeal had expired. The Court held that the treatment by the state courts was arbitrary and a violation of Due Process.

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).*

[United States v. Hansen](#), No. 22-179 (U.S., June 23, 2023): **Statutory Construction (Overbreadth)**: Hansen ran a scam promising non-citizens a pathway to U.S. citizenship through adult adoption and was convicted under 18 U.S.C. 1324. The Ninth Circuit held this statute was overbroad, but in this opinion the Court reversed, finding that the statute criminalizes the purposeful solicitation of specific acts known to violate federal law and was thus not overbroad.

[Samia v. United States](#), No. 22-196 (U.S., June 23, 2023): **Confrontation/Cross-Examination**: Three defendants were arrested by the DEA and charged/tried conjointly in one trial, during which the Government used a post-arrest confession of one defendant that indirectly implicated Samia. The Court held that this did not violate the Sixth Amendment because the admission of the confession of the non-

testifying co-defendant did not directly implicate the other defendant and was subject to a proper limiting instruction. NOTE: Something seems afoot with an opinion like this that is so insane, unjust, and appears to contradict settled law under *Bruton*. I cannot fathom why the Second Circuit held that this was not a *Bruton* violation, but it did, and the Supreme Court agreed. The dissent suggests that the Court has limited *Bruton* and it appears that it has.

[Jones v. Hendrix, Warden](#), No. 21-857 (U.S., June 22, 2023): **Habeas Corpus**: In an old felon-in-possession case, the prisoner tried to attack his conviction under *Rehaif* many years later using 2241 instead of 2255. The Court squelched this legal maneuver, holding that 2255 does not allow a prisoner asserting an intervening change in interpretation of a criminal statute to circumvent the AEDPA restrictions on second/successive 2255 motions by using 2241 (the general habeas statute).

[Lora v. United States](#), No. 22-49 (U.S., June 16, 2023): **Concurrent & Consecutive Sentences**: Federal courts generally have discretion to run sentences either concurrently or consecutively, except under 18 U.S.C. 924 and its host of subsections regarding firearm possession/use. The question in this case is whether the prohibition on concurrent sentences under 924 applies when the accused is convicted of one of the subsections of 924. The unanimous Court held that it does not, which means that such convictions may be ran concurrently.

[Smith v. United States](#), No. 21-1576 (U.S., June 15, 2023): **Venue**: The issue is whether trial in the wrong venue bars re-trial when the case is reversed on appeal. The Court held that re-trial is permissible.

OTHER CASES OF NOTE

[United States v. Alexander Hillel Treisman](#), No. 21-4687 (4th Cir., June 23, 2023): **Search and Seizure (Community Caretaking)**: Warrantless search of a van is permitted under the community caretaking function. This is not a win, but the opinion contains a good discussion of this topic.

[United States v. Peter M. Hoffman](#), No. 20-30323 (5th Cir., June 9, 2023) (*per curiam*): **Appellate Practice**: In this criminal appeal, none of the three judges on the panel could agree on anything. One would affirm, another would dismiss the appeal as untimely, and the third would remand for an evidentiary hearing and re-sentencing. Much like splits in *en banc* cases, the effect is that the judgment of the

district court is affirmed by an equally divided court. I have seen this done occasionally in *en banc* decisions and in SCOTUS, but I do not recall ever seeing a panel divided three ways and unable to reach a decision.

[United States v. Alvaro Castillo, Jr.](#), No. 21-50406 (5th Cir., June 19, 2023):

Search and Seizure (Border; Cell Phones): The panel tackles the thorny issue of cell phone searches at the border, concluding that a “manual” search of what is immediately available on the device (as opposed to a more intrusive forensic search) requires no individualized suspicion.

VICTORIES

GARY JAMES, OKC, scored a nice win in the district court of Kay County representing a police officer indicted for Manslaughter in a deadly police shooting. Gary got the motion to quash granted and then defended in the OCCA in the *Mitchell* opinion, *supra*, where the Court affirmed. Gary presented at the Patrick Williams CDI this year and was entertaining and informative as always. Great work, Gary!

ADAM R. BANNER, OKC, did battle recently in Lincoln County defending a biker club shooting client who had shot and killed the decedent in the back. The State charged First Degree Murder, but asked for the lesser Manslaughter in the First Degree at trial which the jury took and recommended 13 years. In a case where the evidence showed that the client followed the decedent for seven miles before shooting him in the back, failed to call 911, fled the scene, and tossed the gun in a lake after the shooting, I would say that 13 years on Man 1 is solid victory. Nice job, Adam!

HEARSAY

[REEFER MADNESS](#): Oklahoma has 32 times the amount of medical marijuana we actually need.

[FUNDS](#): The Custer County Sheriff says that county law enforcement is drastically underfunded.

DEPUTIES: The Chickasaw Lighthorse Police touts 75 cross-deputization agreements as a beneficial consequence of *McGirt*. And speaking of *McGirt*, **HERE** is an interesting story of the new trial that was ordered for Jimcy McGirt.

CONDEMNED: Death row prisoner Anthony Sanchez intends to reject the clemency process in favor of continued efforts to prove his innocence.

CLASS: O.S.R. is now offering inmates a new class to learn Braille.

ARRESTED: A Seminole Police Officer has been arrested for DUI.

JUVENILES: OJA is offering incentives for juvenile justice professionals at COJAC.

SUED: An excessive force lawsuit has been filed against Valley Brook police (Hunsucker Legal Group is representing the plaintiffs).

RIP: Retired Bryan County Judge Joe Taylor has passed.

AMNESTY: The City of Oklahoma City announced a warrant amnesty program through December.

CHARGED: Prosecutors in McAlester have charged a man with 137 counts of rape.

MORE CHARGES: The Tulsa County D.A. has filed more charges against Tulsa-area attorney Jeff Krigel in an ever-increasingly disturbing story. NOTE the story says that he has been disbarred, but that appears to be inaccurate (it is likely that he has been suspended pending disposition of his disciplinary case).

DRAG: OKC police have arrested more than 100 persons at a street racing gathering.

PROGRAM: There is a new program in Oklahoma County to assist folks get mental health treatment.

REALITY: Oklahoma County has introduced “Reality Check” which is designed to impress upon young people a glimpse of life behind bars similar to the old “Scared Straight” program.

BIG BROTHER: More and more Oklahoma cities are utilizing cameras as a force-doubling device.

WAIT: The wait time at the DPS office in Lawton is at least four hours.

HIGH: The Oklahoma County Sheriff's Office has reported a dramatic increase in the number of persons driving while high.

WACKY CRIME

OKARCHE: Okarche police rescue a...runaway pig (this is a cute story according Mark Hoover).

BBQ: The stolen BBQ truck from Leo's has been recovered.

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. 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: ©2005-2023 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.