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Category



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

[Ni'avien Lee Golden v. State](#), 2024 OK CR 16 (June 13, 2024): **Self-Defense:** In this Youthful Offender case out of Tulsa County, the Hon. Clifford Smith denied a motion to dismiss based on Stand Your Ground self-defense. In this opinion, the Court affirmed because Golden was 16-years-old at the time and thus illegally possessed a firearm, which is a crime precluding application of the statute. NOTE: Judge Lumpkin concurred in result.

[State v. Donte Lamont Pierce](#), No. S-2023-638 (Okla.Cr., June 27, 2024) (unpublished): **State Appeals; Shooting into a Dwelling; Statutory Construction:** In this State appeal out of Garvin County involving a count of Shooting into a Dwelling, the Hon. Trisha Misak dismissed this count because

there was no evidence of specific intent by Pierce to shoot into the dwelling. The Hon. Trisha Smith affirmed. The State appealed and in this series of fractured opinions the Court reversed by a 3-2 vote. NOTE: Presiding Judge Rowland Concurred Specially, as did Vice-Presiding Judge Musseman; Judges Lumpkin and Hudson dissented, concluding that the statute contains specific intent.

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).*

[Thornell v. Jones](#), No. 22-982 (U.S., May 30, 2024): **IAC; Habeas Corpus (Capital Habeas Cases)**: Grant of penalty phase relief by the Ninth Circuit based on IAC is reversed upon misapplication of *Strickland* because the lower court failed to appreciate the strong aggravating circumstances, and concluding that a circuit rule prohibiting courts from assessing the relative strength of expert witnesses was “unsound.”

[Diaz v. United States](#), No. 23-14 (U.S., June 20, 2024): **Experts**: Federal law enforcement “expert” testified that drug traffickers generally do not entrust large quantities of drugs to people who are unaware they are transporting them. The Court found no error, concluding that Rule 704 was not violated because expert testimony that “most people” in a group have a particular mental state is not an opinion about the accused.

[United States v. Rahimi](#), No. 22-915 (U.S., June 21, 2024): **Second Amendment; Possession (Firearm by DV VPO)**: Conviction of firearm possession under 18 U.S.C. 922 by a person subject to protective order is affirmed over a Second Amendment challenge where the Court concluded that when an individual has been found by a court to pose a credible threat to the physical safety of another, that individual may be temporarily disarmed consistent with the Second Amendment.

[Smith v. Arizona](#), No. 22-899 (U.S., June 21, 2024): **Confrontation and Cross-Examination**: *Melendez-Diaz* holds that the State cannot introduce the testimony of an absent lab analyst’s work to prove the results of forensic testing. Here, the

question is whether the State can produce an expert to simply restate an absent lab analyst's factual assertions to support the testimony of the witness. The Court held that the assertions by the absent lab analyst are offered for the truth and therefore are subject to the Sixth Amendment.

[Erlinger v. United States](#), No. 23-370 (U.S., June 21, 2024): **Federal Sentencing Guidelines (ACCA)**: The question of whether prior felonies were committed on separate occasions must be decided by a jury rather than a sentencing judge.

[Snyder v. United States](#), No. 23-108 (U.S., Jun 26, 2024): **Bribery**: There is a difference between a bribe (money paid prior to a service expecting it to be performed) and a gratuity (payment after a service in appreciation of it). Snyder was a mayor who awarded city contracts to a car dealer, which later paid him money (which Snyder argued was payment for consulting). The Court held that 18 U.S.C. 666 is a bribery statute, not a gratuity statute, which does not make it a crime for officials to accept gratuities for their past acts.

[Fischer v. United States](#), No. 23-5572 (U.S., June 28, 2024): **Statutory Construction; Sarbanes-Oxley Act**: This is a January 6 case involving construction of the Sarbanes-Oxley Act of 2002, where Fischer had entered the Capitol but merely milled around inside without actually tampering with documents or interfering with the vote certification process. The Government must prove that the defendant impaired the availability or integrity for use in an official proceeding of records, documents, objects, or other things used in the proceeding. Thus, the conviction is vacated and remanded.

[Trump v. United States](#), No. 23-939 (U.S., July 1, 2024): **Immunity**: Lengthy and interesting series of opinions holding that the President has immunity from criminal prosecution within his constitutional authority. NOTE: The M.O. of the Supreme Court is to mint these new rules and then spend the following years telling us what they actually mean.

OTHER CASES OF NOTE

[United States v. Trecika Vantina Dunlap](#), No. 22-4625 (4th Cir., June 18, 2024): **Plea Bargains**: The record was ambiguous whether the district court rejected a plea bargain, but the appellants argued on appeal that the district court accepted the plea bargain but deviated from it. The panel held that where the record is

ambiguous as to whether the district court accepted or rejected the plea deal, the ambiguity must be construed in favor of the defendant.

CLEET LEGAL UPDATE

Preston Draper, General Counsel of the Council on Law Enforcement Education and Training, has sent to me a link to its annual legal update. Preston does a good job with this and it contains excellent summaries of case law and relevant statutes.

You can view or download [HERE](#).

VICTORIES

[JOE WHITE, KATE WHITE, & AMBER WALKER](#), OKC, secured a dismissal at preliminary hearing of charges against a football coach alleging child neglect. The charges were dismissed by Blaine County Associate District Judge Allison Lafferty. Great job, Joe, Kate & Amber!

HEARSAY

[SEARCH](#): The Tulsa Police Department executed a search warrant on the Tulsa Juvenile Justice Center.

[REMOVAL](#): The Chief Judge of Tulsa's Juvenile Division asked to be removed from overseeing the Juvenile Justice Center.

[NEW CHIEF](#): The City of Ponca City has a new Chief of Police.

[DRAMA](#): NonDoc described the Oklahoma County Jail situation as a soap opera.

[FAIL](#): The Oklahoma County Jail has failed its ninth straight inspection.

[JUSTICE](#): A 1991 Tulsa rape conviction has been overturned by a district court judge.

[DUSTED](#): Someone crop-dusted diners at The Mont in Norman.

ARRESTED: A former Nowata County Deputy has been arrested for embezzling guns from the Sheriff's Office.

DISMISSED: The charges against defense attorney Winston Conner have been finally dismissed.

SMUGGLERS: Two men tried to smuggle contraband into LCF.

RETIRING: District Judge Jill Weedon is retiring on November 1.

NEW: Stephens County has a new Undersheriff.

NEW II: The City of Stillwater has a new Chief of Police.

RESOLVED: A settlement has been reached regarding detention of prisoners awaiting competency hearings.

RECORDS: The Woodward County Court Clerk has a new records management system room.

ARRESTED: A Thackerville Police Officer has been arrested for larceny.

BIKES: The Bartlesville PD has created a bicycle patrol unit.

JUVY: An attorney with Smiling Law has described the Tulsa Juvenile Detention Facility as a "brothel for children."

CONTRABAND: Lawton's KSWO investigates "the contraband issue" in Oklahoma prisons.

ACCUSED: An animal control officer in Seminole has been accused of animal cruelty.

EXECUTION: The OCCA has scheduled a September execution date for Emmanuel Littlejohn.

DROWNED: An OKC police officer has drowned at Lake Stanley Draper.

INCREASE: Homicide rates were up in OKC but mainly because fentanyl-related deaths were included in the numbers beginning in 2023. Also, a university estimates that 63% of American \$1 bills have **fentanyl residue** on them.

REPORTING: In what Mark Hoover referred to as "bungled" KFOR covered the cases of Don Roberts and Glynn Simmons who were convicted of a murder in 1974. Simmons was exonerated and has opened the "**Free Man's Food Truck**" in OKC.

SURVEYS: The Cleveland County Sheriff has threatened to fire any employee who does not respond to his survey.

JUDGE LOVELL: Oklahoma Supreme Court Chief Justice John Kane has recommended removal of Garfield County Associate District Judge Brian Lovell.

DISRUPTION: A disruptions occurred at the Tulsa County Courthouse which resulted in people being ejected from the courtroom. After shots were fired outside the courthouse, the judge closed the courtroom.

CONSTRUCTION: 32 inmates constructed a new central control building at the John Lilley CC, Boley, OK.

ARRESTED: The Delaware County Undersheriff has been arrested for DUI and Reckless Driving in OKC.

TIEBREAKER: The new Carter County Sheriff was selected via a tie-breaking drawing from a container.

APPOINTED: Sarah L. Bridge, a family law attorney, has been appointed District Judge for District 23 (Lincoln and Pottawatomie) by Gov. Stitt.

HIRED: Defense attorney Thomas Griesedieck has been hired as the new Special Judge in Kay County.

NEW: Osage County has a new Sheriff.

WACKY CRIME

NORMAN: A joyrider did doughnuts on Norman's Westwood Gold Course.

MEATS: Police in Claremore have arrested a Cuban in connection with a meat-stealing scheme that has caused \$20,000.00 in damages to local meat markets.

AMMO: As Mark Hoover said, what could be more American than ammo vending machines?

LAWTON: A Lawton man has been jailed following a "rock-throwing rampage."

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