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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

[State v. Aguilar](#), 2024 OK CR 18 (July 18, 2024): **State Appeals; Child Neglect; Quash**: In this State appeal out of Kay County, the Hon. Lee Turner granted a motion to quash on one count of Child Neglect where the State had alleged use by a pregnant woman of medical marijuana. The Court affirmed. NOTE: Judge Lumpkin and Judge Lewis dissented. Judge Hudson concurred specially.

[Bowlds v. State](#), 2024 OK CR 20 (July 18, 2024): **Peremptory Challenges; Consecutive/Concurrent Sentences; Pro Se Representation; IAC**: Bowlds was convicted by jury in Logan County of Kidnapping, A&B w/Dangerous Weapon, and Domestic Assault and Battery (the Hon. Phillip Corley, presiding). The Court affirmed over claims related to: 1) a *Batson* claim; 2) running his sentences

consecutively; 3) denial of counsel at sentencing when he chose to represent himself; 4) IAC. NOTE: This opinion was published by Order in *Bowlds v. State*, 2024 OK CR 19, on motion of the State to address the issue of re-appointment of counsel after a valid prior waiver of counsel.

[State v. Jace Lee McKittrick](#), No. S-2023-563 (Okl. Cr., July 3, 2024) (unpublished): **State Appeals; Quash; Evidence (Hearsay; Excited Utterance)**: In this State appeal out of Tulsa County, the State accused McKittrick of Kidnapping and other crimes. At PH, the complaining witnesses refused to cooperate or testify, so the State introduced their prior hearsay statements as excited utterances, and the magistrate issued a bindover order. The Hon. Michelle B. Keely, however, granted a motion to quash, concluding that admission of the statements violated the Sixth Amendment and that the statements were not excited utterances. In this opinion, the Court affirmed. NOTE: The opinion was issued by Judge Hudson, but in an unusual posture, all other judges concurred in result.

[Earl Wayne Bell, II, v. State](#), No. F-2022-690 (Okl.Cr., July 3, 2024) (unpublished): **Prosecutorial Misconduct (Vouching)**: In this case out of Woods County, Bell was convicted of various counts of sexual abuse (the Hon. Justin P. Eilers, presiding). The Court affirmed, but did find error in a law enforcement officer testifying that he found the statements of the complaining witness to be credible.

TENTH CIRCUIT

[United States v. Steven Robert Venjohn](#), No. 23-8028 (10th Cir., June 10, 2024) (Published) (Phillips, Seymour & Murphy): **Federal Sentencing Guidelines (Crime of Violence)**: In light of *United States v. Taylor*, 142 S.Ct. 2015 (2022), the Colorado crime of Menacing no longer categorically qualifies as a “crime of violence” under the Guidelines, thus sentence is vacated and remanded for resentencing. NOTE: Judge Phillips dissented, finding no plain error.

[United States v. Robert Lewis Dear, Jr.](#), No. 22-1303 (10th Cir., June 10, 2024) (Published) (Bacharach, Briscoe & Moritz): **Insanity & Incompetency**: District court order, on motion of the Government, to medicate Dear involuntarily to restore his sanity to stand trial is affirmed.

[United States v. Anthony Buntyn](#), No. 23-2007 (10th Cir., June 18, 2024) (Published) (Bacharach, Baldock & Kelly): **Fourteenth Amendment; Jurors;**

Sufficiency; Closing Argument: Interesting case involving an allegation that Buntyn, employed by a private company to transport pre-trial detainees for law enforcement did so in an inhumane manner under the Fourteenth Amendment. He was convicted under 18 U.S.C. 242. The panel affirmed over his claims related to: 1) sufficiency of the evidence; 2) district court precluding defense counsel from using the term “malice” during closing argument; and 3) verdict coercion by the district court.

[Alonzo Cortez Johnson v. William “Chris” Rankins](#), No. 23-5095 (10th Cir., June 11, 2024) (Published) (Phillips, Moritz & Eid) (N.D. Okla., Hon. Terence C. Kern): **Peremptory Challenges:** District court ruling that a *Batson* reconstruction hearing was not feasible is reversed and remanded for a hearing.

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. Joel Francois Jean](#), No. 23-40463 (5th Cir., July 15, 2024): **First Step Act:** Jean exhibited extraordinary rehabilitation and showed that his sentence, if imposed today, would be ten years shorter, so the district court granted compassionate release. The Government appealed and in this opinion the panel affirmed. **NOTE:** The opinion contains a good discussion of the “habeas channeling rule” which circumscribes claims raised under the First Step Act but actually challenge the conviction itself, which the appellate court will treat as a request for habeas relief.

DOUBLE JEOPARDY

I was perusing the listserv lately and an interesting discussion centered around criminal conduct that is charged in district court and also municipal court (tickets) based upon the same alleged conduct. One statute that bears on this is the obscure [11 O.S. 27-127](#), which states that, “When a defendant has been in jeopardy for the same or any lesser included offense in a municipal court or district court, he shall not be prosecuted in another court for the same or a lesser included offense.”

In addition, a neat unpublished case on this issue, analyzed under 21 O.S. 11, is [State v. Donald Isaiah Phares](#), No. S-2004-1009 (Okla. Cr., July 7, 2005) (unpublished), which involved a car crash and a Negligent Homicide prosecution, but the police had also ticketed Phares for the traffic infraction of Failing to Stop at a Stop Sign, which he promptly went down to the courthouse, entered a nolo plea, and paid the ticket. This was enough to preclude prosecution in district court on the major crimes, that State appealed, and the OCCA affirmed (with a dissent by Judge Lumpkin).

So, if that client comes in the door with a similar problem, be aware of the possibility of overlapping prosecutions and the prospect of dealing with municipal tickets as a maneuver to preclude more serious legal problems in district court.

VICTORIES

THOMAS E. SALISBURY, Ponca City, secured a dismissal in a drug case on speedy trial when the State conceded the motion in a case involving a 28-year-old drug warrant. Nice work, Tom!

HEARSAY

[CHARGED](#): OSP employee charged with having inappropriate relationship with inmate.

HEARINGS: A judge in Woodward County ruled that Oklahoma law allows crime victims to be present in all case hearings.

FENTANYL: KTUL in Tulsa has taken a close look at the statistics for fentanyl.

NOSE: A Green Country dog has been used to sniff out a specific chemical on electronic storage devices to find cell phones and other computer equipment to find child predators.

DISMISSED: Charges have been dismissed against a Catoosa man who had pled guilty to child abuse.

JUVENILE: The Tulsa Board of County Commissioners has assumed management of the Tulsa County Juvenile Justice Center and appointed a manager.

JAIL: The City of Valley Brook will stop jailing people who cannot pay fines.

REFER MADNESS: The Minco Public School system has a marijuana problem.

MAFIA: Long but interesting article about Charles “Pretty Boy” Floyd.

RESIGNED: Having just won re-election, the Pittsburg County Sheriff agreed to resign.

RATES: OJA has approved new detention rates per child.

SUPERMAX: Interesting article about inmates housed in Colorado’s SuperMax federal prison (“The Alcatraz of the Rockies”).

DEVIATION: Pittsburg County Judge Mike Hogan has deviated from a jury recommendation of punishment (in a way that punished the accused more).

HUB: Oklahoma City will build a new “Diversion Hub” to provide coordinated, stabilizing services to individuals so they can navigate the criminal justice system.

COMMENTS: A lieutenant with the Tulsa Police Department may be in hot water after making a controversial post about the attempted assassination of former President Trump.

ACCIDENT: A freak accident has killed one DOC employee and injured another.

ARRESTED: An OKC PD police sergeant has been arrested for Domestic Abuse in McClain County.

RESOURCES: OIDS and a number of other sponsors are hosting a “Resource Fair” in Norman on Wednesday, July 24, 2024.

RESIGNED: The Chief of Police in Apache has announced his resignation.

DISORDER: A courtroom melee began as a defendant was sentenced in an Oklahoma County murder case.

WACKY CRIME

ABUSE: A Wagoner County man has been arrested for abusing a cat...on National Kitten Day.

BANDIT: A “Book Bandit” has stolen the little library of books for kids in Del City.

UFO: A state trooper pulled over a UFO on the Turner Turnpike for a license plate violation.

FUMBLE: KSWO reported that a pair fumbled their prison contraband drop that was stored in...three footballs. Get it? They *fumbled*....

COMPLIMENT: A speeder in Cimarron County...complimented the professionalism of the trooper who stopped him.

IN STEREO: A Bartlesville man has been charged with Assault and Battery...after throwing a stereo speaker at another person.

DUI: Former Rogers County District Judge Kassie McCoy was arrested for DUI and leaving the scene of a crash at the drive-through of a Taco Bell.

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