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Category



**OKLAHOMA CRIMINAL DEFENSE WEEKLY**

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[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

[Cornelius v. State](#), 2023 OK CR 14 (July 27, 2023): **Speedy Trial; Sufficiency; Possession (Firearm by Felon)**: Cornelius was convicted by jury in Wagoner County (the Hon. Douglas Kirkley, presiding) of Possession of a Firearm ACF. The Court affirmed over claims relating to: 1) denial of speedy trial; and 2) sufficiency showing that he knew the firearm was capable of discharging a projectile. NOTE: The Court re-affirmed that “operability” of the firearm is not an element of the crime in felon-in-possession cases, and overruled inconsistent cases to that effect.

[Kurtanic v. State](#), 2023 OK CR 13 (July 27, 2023): **Child Sexual Abuse; Jury Instructions (Child Sexual Abuse); Evidence (Spoliation); Evidence (Child**

**Hearsay**); Kurtanic was convicted by jury of Child Sexual Abuse in Payne County (the Hon. Stephen Kistler, presiding). The Court affirmed over claims relating to: 1) jury instructions/right to a unanimous verdict because the instructions did not require all jurors to find that he had committed the same singular underlying crime; 2) admission of hearsay statements made to the mother, forensic interviewer, and SANE nurse; 3) “best evidence” violation when the SANE nurse destroyed the audio recording of the examination; and 4) cumulative error.

[Kunta Kinte Ford v. State](#), No. RE-2022-821 (Okl.Cr., July 27, 2023)

(unpublished): **Suspended Sentences**: In this revocation case out of Kiowa County, the Court affirmed over a claim that the hearing was not held within 20 days of the not guilty plea (Ford had argued that the 20 days commences from the time of the initial appearance, but the statute is clear that it runs from the entry of a not guilty plea). NOTE: This is a loophole where district courts string these cases out by holding an “initial appearance” but not allowing or asking the probationer to enter a plea until things like counsel and bail are sorted out.

[Shannon Joseph Terrell v. State](#), No. F-2021-875 (Okl.Cr., July 27, 2023)

(unpublished): **Witness Tampering/Intimidation**: Terrell was convicted by jury of Domestic Abuse and other crimes in Rogers County (the Hon. Stephen R. Pazzo, presiding). The Court affirmed on all counts except for the count of Witness Intimidation because the trial evidence showed that Terrell tried to prevent the witness from calling the police and reporting the crime, not from testifying in court.

[Jayden Shane Kinsey v. Hon. Justin Eilers](#), No. PR-2023-492 (Okl.Cr., July 28, 2023) (unpublished): **Double Jeopardy; Extraordinary Writ**: In this unpublished writ order, the Court granted extraordinary relief where the accused had gone to trial on four counts of sexual assault, but the jury only convicted on two. However, after trial it was discovered that a jury had lied about being sexually abused in her past, and a motion for a new trial was granted (not a mistrial, which went to verdict, but a new trial). Prior to the start of the new trial, the State sought to try the accused on all counts—even the two counts for which he had been acquitted. In this Order, the OCCA denied the State the right to do this, holding that Double Jeopardy prevented it.

[Aaron Nathaniel Kirk v. State](#), No. F-2021-635 (Okl.Cr., July 27, 2023)

(unpublished): **Waiver (Right to Counsel)**: Kirk proceeded *pro se* and was convicted by jury in Carter County (the Hon. Dennis R. Morris, presiding) of Domestic A&B by Strangulation. On appeal, he argued that his waiver of counsel

was not intelligent, knowing and voluntary, and the Court agreed. NOTE: Judge Lumpkin and Judge Lewis dissented.

[Sara Faye Wilson v. State](#), No. C-2021-1458 (Okla. Cr., July 27, 2023) (unpublished): **Guilty Pleas**: Wilson entered a guilty plea to Falsely Personating another to Create Liability and was sentenced by the Hon. Jill C. Weedon in Custer County. The Court granted certiorari because Wilson was not informed of the correct punishment range.

[Michael Walker v. State ex. rel. Service Oklahoma](#), No. 120,880 (Okla. Civ. App., Div. III, July 28, 2023) (Not for Official Publication): **DUI (DPS)**: In this driver's license appeal, the Court held that the police officer had PC to arrest, but did not have statutory authority to limit the times and purposes for which Walker may drive while his license is modified.

## **TENTH CIRCUIT**

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[United States v. Ivan Michael Faunce](#), No. 22-4019 (10<sup>th</sup> Cir., May 9, 2023) (Published) (Hartz, Baldock & Bacharach): **Supervised Release; Witnesses**: Revocation of supervised release is affirmed over claims related to: 1) lack of notice/constructive amendment where the Government had alleged a specific section of Utah law Faunce had violated but the district court relied on a different subsection (no plain error); and 2) allowing a Government witness to appear via Zoom (no plain error).

[United States v. Jimmy Lee Brooks](#), No. 21-6059 (10<sup>th</sup> Cir., May 22, 2023) (Published) (Moritz, Seymour & Eid) (W.D. Okla., Hon. Charles B. Goodwin): **Federal Sentencing Guidelines (Attempted Murder)**: Brooks was convicted of Unlawful Possession of Ammunition and Witness Tampering. At sentencing, the district court applied section 2A2.1 (the attempted murder cross-reference) because of evidence that Brooks had shot at a car where his girlfriend was riding and hit her in the buttocks. The panel held that this enhancement applies only when the accused attempted to kill, and remanded to the district court to consider this question. NOTE: Judge Eid dissented, finding the error, if any, harmless because the district court had in fact made such a finding.

## **UNITED STATES SUPREME COURT**

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“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

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[Blaine Franklin Shaw, et al., v. Herman Jones](#), No. 19-1343-KHV (D. Kan., July 21, 2023): **Search and Seizure (Traffic Stops; Consent)**: This is the interesting civil opinion out of Kansas where a federal judge criticizes the conduct of Troopers who stop, conclude, and then engage in friendly conversation seeking consent to continue discussion or to search the vehicle. The opinion states that this is colloquially called the “Kansas two-step” but I think it is pretty much how they all operate, certainly in Oklahoma that is how they are trained and our OCCA pretty much lets them do this to unwary motorists who do not know that they can refuse to continue talking to police.

[United States v. Andres Vargas](#), No. 21-20140 (5<sup>th</sup> Cir., July 24, 2023) (*en banc*): **Federal Sentencing Guidelines (Drug Conspiracies)**: The *en banc* Court tackled the question whether the Guidelines, which punishes multiple violations of “controlled substance offenses” also applies to drug conspiracies. The Guidelines say it does, and the Court agreed with Tenth Circuit precedent that application of this deferential standard to the Guidelines commentary solved the case, but also noted that other circuits have read SCOTUS precedent as not mandating deference to the Guidelines commentary. A six-judge dissenting bloc disagreed, so this issue might be headed to SCOTUS for resolution.

## HEARSAY

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**THE A.G.:** Attorney General Gentner Drummond went out on the road and told some wild stories of his past.

**O.D.**: Personnel at the Blaine County Jail overlooked contraband during the booking process, which resulted in overdoses by other inmates. Also, two female inmates at the [Oklahoma County Jail](#) overdosed.

**DRUGS/PREGNANCY**: The Frontier analyzed the legal consequences of combining drugs and pregnancy.

**DRONES**: Some cities in California are using drones as first responders to 911 calls.

**MAIL**: Two men in Tulsa were arrested for using “glue traps” to steal mail.

**NIGHT COURT**: The Tulsa Municipal Court will begin offering night court on Thursdays.

**EVIDENCE**: The Tulsa P.D. now offers residents new technology that allows them to upload any evidence of a crime straight to the police.

**DISMISSED**: Oklahoma County District Attorney Vicki Behenna has dismissed charges with prejudice against seven Oklahoma City police officers in three officer-involved fatal shootings.

**FIRED**: The former Warden of Joseph Harp CC has no idea why he was fired.

**SCAM**: A man scammed metro residents by promising a semi-pro football team that never materialized.

**HOOPER**: Cherokee Nation A.G. Sara Hill discusses the *Hooper* case.

**PAYMENT**: An Edmond police officer got out of a jam by paying \$1,570.00 to Valley Brook (which, by the way, is only 0.3 square miles in area).

**LIABLE**: A forensic scientist has been found civilly liable for fabricating evidence that sent two men in Connecticut for prison for 30 years.

**PENITENCE**: Inmates at Jess Dunn packed meals for the hungry.

**RIOT**: This year marks the 50<sup>th</sup> year anniversary of the riot at OSP. **NOTE**: Years ago when I was practicing in Enid in the late 90s, I represented a client charged with DUI. I met with him at the jail and we got to talking about his past. He had just been released from prison less than a year prior to the DUI after having served almost 40 calendar years for murder. He was at OSP during the riot in 1973 and he told me all about it. It was a violent, bloody mess and he survived it by staying in a neutral area and knowing some of the violent people running it. That event was no joke.

**WHISTLEBLOWER**: A whistleblower claims to have first-hand knowledge of rapes committed against inmates at Eddie Warrior CC.

**FIRE**: The Colbert City Council has fired the Chief of Police.

**DIED**: An inmate at the Marshall County Jail collapsed and died.

**HONORED**: District Attorney Jack Thorp has been named District Attorney of the Year. Also, **Osage County First Assistant DA Brett Mize** has been awarded the Mitch Sperry Award for best prosecutor in the State.

**DONATIONS**: The Cherokee Nation will donate revenue from traffic citations to the town of Verdigris.

**POISON**: A former employee at the OKC water treatment plant at Lake Hefner had been planning to poison the city's water supply.

## **WACKY CRIME**

**CARTS**: A Norman merchant has complained about the shopping carts left by the homeless on his property...about 140 total!

**DOCTOR**: Some kid is going around Oklahoma pretending to be a Physician's Assistant.

**EDMOND**: A customer at the Edmond Wal-Mart was assaulted and robbed...by an employee of said Edmond Wal-Mart.

**OKC**: The Oklahoma City "Clipper Bandit" has struck another barber shop.

**LAWTON**: A Lawton man has gone on a "hammer rampage."

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