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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**

[Cotton v. State](#), 2024 OK CR 21 (August 1, 2024): **Suspended Sentences:** Cotton appealed the revocation of his suspended sentence by the Hon. Grant Sheperd (Comanche County) on the basis that the trial court extended illegally the original sentence by requiring five years of the ten year sentence to be “resuspended” upon release. The Court found this was error. NOTE: Judge Lumpkin penned a special concurrence stating that the opinion does not create new law, but rather applies established precedent; and he set forth his thoughts on citation to appellate opinions which in his view should consist of the originating case, not the most recent case discussing the legal issue. This is an esoteric discussion of highly refined brief-writing, but I tend to agree with him on the point, although the most

common practice by far is to cite the most recent case rather than the originating case.

[Keith Anthony Pease v. State](#), No. F-2023-66 (Okl.Cr., August 1, 2024) (unpublished): **After-Formers (Bifurcation)**: In this case out of Jackson County (the Hon. Eric Yarborough, presiding), the trial was not bifurcated regarding the counts where a prior conviction was an element of the crime. The Court found this was reversible plain error. NOTE: Judge Lumpkin and Judge Lewis dissented.

[Jay Alan Derr v. State](#), No. F-2023-210 (Okl.Cr., August 1, 2024) (unpublished): **Deferred Sentences**: In this acceleration case out of Harmon County (the Hon. W. Mike Warren, presiding) Derr argued that his sentence exceeded that which is allowed under the statute. However, there is a procedural trap in acceleration cases where the Court will only hear issues related to the validity of the acceleration order, not the sentence. In order to challenge the sentence, the appellant must file a motion to withdraw the plea and a petition for certiorari.

[Tyler Scott Paulsen v. Wagoner County Sheriff's Office, et al.](#), No. 121,575 (Okla. Civ. App., Div. IV, July 31, 2024) (Not for Official Publication): **Open Records Act**: Instructive opinion where the panel held for the first time that communications on private devices discussing public business is subject to the Open Records Act. NOTE: This is a nifty win by Brendan M. McHugh which may have some carryover applicability to criminal cases.

## **TENTH CIRCUIT**

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[United States v. Maurice Williams](#), No. 23-3170 (10<sup>th</sup> Cir., July 2, 2024) (Published) (Hartz, Eid & Carson): **Supervised Release**: Revocation of supervised release is affirmed over claims related to: 1) admission of evidence of a controlled buy; and 2) sufficiency of the evidence.

[United States v. Megan Hess](#), No. 23-1008 (10<sup>th</sup> Cir., July 2, 2024) (Published) (Phillips, Seymour & Murphy): **Federal Sentencing Guidelines (Loss Calculations; Vulnerable Victim; Sophisticated Means)**: Funeral home operators were convicted and sentenced for obtaining fraudulently, selling and shipping dead bodies. Although there was a plea agreement, the district court applied additional enhancements and varied upward. The panel found error regarding loss calculations, vulnerable victim, and application of the sophisticated means enhancement.

[United States v. Angel Landa-Arevalo](#), No. 22-3133 (10<sup>th</sup> Cir., June 25, 2024) (Published) (Tymkovich, Murphy & Carson): **Insanity & Competency; Speedy Trial**: Drug conviction affirmed over issues relating to: 1) mental competency when the accused was found mentally competent but insisted on a second, more extensive evaluation; and 2) speedy trial.

[United States v. Darnell Tyree-Peppers](#), No. 23-3171 (10<sup>th</sup> Cir., June 24, 2024) (Published) (Hartz, Eid & Carson): **Supervised Release**: Revocation of supervised release is affirmed when the district court did not conduct a hearing on the petition until after the expiration of the term because Peppers was on trial in state court for murder.

## 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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[United States v. Joseph Boswell, Jr.](#), No. 23-30315 (5<sup>th</sup> Cir., July 23, 2024): **Statute of Limitations**: Conviction for bankruptcy fraud is reversed based on a violation of the statute of limitations. This case deals with whether the indictment was properly sealed (which would toll the SOL). The panel determined that the Government did not provide sufficient reason for sealing.

## OKLAHOMA SURVIVOR’S ACT

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Practitioners should take note of a new series of statutes that take effect on August 29, 2024, named the Oklahoma Survivor’s Act. The legislation is found at [22 O.S.](#)

[1090.1](#) *et seq.* The act allows sentencing consideration for clients who are survivors of domestic abuse and are going to be sentenced, and even re-sentencing to survivors of domestic violence who have been convicted of crimes.

Notably, 22 O.S. 1090.5 states that persons already in custody and serving a sentence prior to the effective date of the act may apply for re-sentencing. So, the Act is retroactive to clients already sentenced. This would likely apply to many of our clients, so you might want to review your case files and see if this affects your case load. Petitions for re-sentencing can be filed on or after the effective date of the Act.

## NEFARIOUS (2023)

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The movie [Nefarious](#) came out last year and I have been meaning to review it here and am finally getting around to doing that. The premise is interesting. A death row inmate in Oklahoma (played by Sean Patrick Flanery) is facing imminent execution and proceeds to play psychological games with a psychiatrist (played by Jordan Belfi) sent to evaluate him.

Is the inmate possessed by a powerful demon or faking? That is what the psychiatrist must decide. What follows is are good performances and an engaging cat-and-mouse game between the two.

Oklahoma criminal defense lawyers will certainly get a kick out of the prison chosen for “death row” which is not OSP at McAlester, but rather the old Oklahoma State Reformatory in Granite. I have been there many times, as have most of you I would expect, and it really does have the look and feel of an old time rural prison. Many of the scenes shot there are places you will recognize which kind of neat.

This is not a great film, but it is entertaining and worth a look.

## VICTORIES

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**BRECKEN WAGNER**, McAlester, had a banner couple of weeks in Pittsburg County, securing a dismissal in a case where the client had been accused of

bringing a cell phone into a prison based on discovery violations; and also had another jury trial stricken because of a dispute over exhibits. Nice job, Brecken!

Also, our very own **MARK HOOVER**, OIDS, and **BRENDAN M. McHUGH** had nice appellate wins featured above.

## **HEARSAY**

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**DIGITAL MAIL**: DOC is transitioning to digital mail to reduce contraband.

**CHARGED**: Three Carter County jailers have been charged with sexually assaulting jail inmates.

**NEW**: Comanche County has a new Jail Administrator.

**DOGS**: The Oklahoma State Reformatory has started a program to reform dogs.

**DOC**: DOC has a new substance abuse program.

**WARRANTS**: Oklahoma County will host a warrant-clearing event on Friday, August 16, 2024.

**LIE?**: Rep. Justin Humphrey says that the OMMA's claim that its firing of 30 employees was due to a revenue shortfall is a lie. Also, the OMMA has a "**secret shopper**" program.

**APOLOGY**: Oklahoma County District Attorney Vicki Behenna has apologized to a family because family members were not given an opportunity to be heard in court.

**FANS**: Dick Conner CC hosted a "fan drive" by soliciting donations to purchase small fans to cool down inmates in their cells.

**NEW CHIEF**: The Free Press article about new Oklahoma County Chief Public Defender Bridgitte Biffle.

**POLICE**: The Choctaw/Nicoma Park Public Schools have launched a new police department.

**PLED**: An attorney in Wellston has pled no contest to a number of charges.

**CLEMENCY**: Death row inmate Emmanuel Littlejohn may have a tough audience as he seeks clemency on Wednesday.

**SOK**: Service Oklahoma has announced a public awareness campaign for the new car tag law effective September 1.

**MUSIC**: OJA has a music therapy program.

**SLOW**: The federal district court in Oklahoma City is among the slowest federal courts in the nation to resolve cases.

**DISMISSED**: Stephens County District Judge Brent Russell dismissed an Open Records Act case, ruling that District Attorney Jason Hicks had turned over all records requested.

**OVERCROWDING**: A new Oklahoma law, which is retroactive, may reduce prison overcrowding (the article describes the Oklahoma Survivor's Act, featured above).

**INMATE CARE**: Turn Key Health, which provides medical services to many jails, may not be doing such a great job; also, the story noted that the company was co-founded by state Rep. Jon Echols.

**PRISON**: The relentless Rep. Justin Humphrey has sought an interim study of the DOC to determine what is really happening inside Oklahoma prisons.

**ARRESTED**: A Carter County jailer has been arrested for raping an inmate.

**ARRESTED II**: A kitchen staff member at LCF has been arrested for smuggling synthetic marijuana into the prison.

**MENTAL HEALTH**: Oklahoma County is proceeding with a Behavioral Care Center to address the intersection of criminal justice and mental health.

**CORRUPT**: A former detention officer at the Tulsa County Juvenile Justice Center says that the administration is corrupt. The Chief Public Defender in Tulsa wants the Center **closed immediately**.

**CHARGED**: An Oklahoma inmate has been charged with Human Trafficking while behind bars.

**NAMES**: The newly-elected Carter County Sheriff has named the Undersheriff.

**NEW**: The City of Broken Arrow has a new municipal judge.

**HEARING**: Winston Conner got a nice evidentiary ruling in a trial in Delaware County.

**BEDBUGS**: The bedbug problem at the Oklahoma County Jail has resurfaced or was never fixed.

**INSPECTIONS**: The Department of Health has issued an Administrative Compliance Order directing the Oklahoma County Jail to admit inspectors into the facility without notice.

**VENDOR**: Service Oklahoma has selected a new vendor for its all-new driver license system of record.

**LEAVE**: The Chief of Police in Miami has been placed on administrative leave amid a misconduct probe.

**INVESTIGATION**: The FBI and DOG are investigating abuse at the McCurtain County Jail.

**SEIZED**: More than 100,000 marijuana plants were seized at an illegal grow site near Ardmore.

**FIRE**: A Broken Arrow police sergeant was fired after bodycam video of him confronting a homeowner was released.

**SWORN**: The new Chief of Police in Tulsa has been sworn.

**SLAMMED**: A Watonga man was slammed to the ground by police for no good reason.

**OBN**: OBN has intercepted 23 kilograms of fentanyl.

## **WACKY CRIME**

**FUNNY**: A Tik-Tokker is posting “Oklahoma’s Funniest Court Transcripts.”

**PONY**: A pony decided to take a dip in an Oklahoma swimming pool...not to worry, the equine is fine.

**CARS**: There are dozens of cars in the Verdigris River, but law enforcement will not extract them unless there is a compelling law enforcement request.

**CHAIR**: A Bryan County woman has been accused of assaulting a deputy...with a chair.

**NUMBER FOUR**: Oklahoma ranks number four in road rage incidents.

**TULSA**: A man went into several restaurants in Tulsa...to steal plumbing parts from bathrooms.

**BOKCHITO**: A man in Bokchito capped off his theft of cigarettes with the attempted theft of a Dr. Pepper truck.

**DEL CITY**: A man stole lights from a fountain in Del City...because he thought they were made of gold.

**SWIM**: A suspect swam an astonishing two miles in an effort to escape deputies in Mayes County...but was unsuccessful.

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