

OCDW 08.07.23

Category



OKLAHOMA CRIMINAL DEFENSE WEEKLY

www.ocdw.com

08.07.23

[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

[Jeremy Vann v. State](#), No. F-2022-486 (Ok1.Cr., August 3, 2023) (unpublished): **Evidence (Gang Affiliation; Res Gestae)**: Vann was convicted of drug crimes in Muskogee County (the Hon. Timothy King, presiding). The Court affirmed over several claims, including introduction of evidence of gang affiliation (the Court found it admissible as res gestae). **NOTE**: Judge Rowland, P.J., concurred in result, finding error in the gang affiliation evidence (but harmless). Lewis, J., special concurred, also finding error in the admission of gang affiliation (but harmless).

[Robert Leon Hashagen, III, v. State](#), No. F-2021-203 (Ok1.Cr., July 13, 2023) (unpublished): **Judicial Bias**: Hashagen was convicted by jury in Oklahoma

County of Murder in the First Degree (the not-so-honorable and former District Judge Timothy R. Henderson, presiding). The Court reversed on the basis of judicial bias where Judge Henderson had an undisclosed sexual relationship with the prosecutor. NOTE: Judge Lewis dissented on the basis that the relationship ended more than two years before the trial, which to him did not create a probability of actual bias. Judge Lumpkin dissented, finding that there was no prejudice.

CLEET UPDATE: CLEET General Counsel Preston Draper has prepared a very informative and handy 2023 Legal Update featuring cases and new laws.

TENTH CIRCUIT

[United States v. Matthew C. Spaeth](#), No. 21-3096 (10th Cir., June 12, 2023) (Published) (Tymkovich, Phillips & McHugh): **Guilty Pleas; Prosecutorial Misconduct**: In this guilty plea case, Spaeth filed a 2255 to withdraw his plea based on the U.S. Attorney's Office in Kansas listening in on attorney-client phone calls. The panel held that he was not entitled to relief in this tortured opinion. But, you will be reassured that the panel "condemned" the U.S. Attorney's Office.

[United States v. Zechariah Freeman](#), No. 22-2039 (10th Cir., June 9, 2023) (Published) (Moritz, Briscoe & Rossman): **Sufficiency; Jury Instructions (Sexual Assault); Peremptory Challenges**: Conviction for sexual abuse (complaining witness was drunk and asleep) is affirmed over claims relating to: 1) sufficiency of the evidence; 2) refusal to instruct the jury on an essential element of the offense; and 3) denial of a request to use peremptory strikes on alternates. NOTE: The Tenth Circuit does not have pattern jury instructions for sexual assault, so the parties lifted the ones from the Fifth Circuit, which the panel basically found acceptable.

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. Leron Liggins](#), No. 22-1236 (6th Cir., August 3, 2023): **Judicial Bias:** At a pre-trial hearing in a drug conspiracy case, the district judge stated that Liggins “looked like a criminal to me” and that Liggins was doing “what criminals do.” This prompted a recusal motion, which was denied, but in this opinion the panel vacated that order, vacated the judgment of conviction and sentence, and remanded to another judge.

DISCIPLINARY HEARING RE: ISAAC SHIELDS & GEORGE GIBBS, JR.

Prosecutors Isaac Shields and George Gibbs, Jr., have been subject to a disciplinary proceeding in [SCBD-7480](#). The subject of the inquiry is the allegation that both of them spied on a deliberating jury using the courthouse video security feed.

The genesis of the matter stems from a criminal case out of Rogers County in [State v. Kraft](#), CF-2018-465. Some of the pleadings in that matter pertaining to the motion for a new trial filed by the Defendant are instructive as well.

Since the principal witnesses in the matter are in the Tulsa/Claremore area, the tribunal has opted to hold the **public hearing at the Holiday Inn Express in Claremore on August 17th and 18th, 2023**. This should be an interesting proceeding, both factually and as to what, if anything, the panel recommends to the Supreme Court. If any of you have cases where this might be an issue, you may want to attend or have a note-taker attend.

VICTORIES

BRECKEN WAGNER, McAlester, won a jury trial for a client charged with Child Sexual Abuse in Pittsburg County. He issued a call for a second-chair, which was answered by **MICHAEL TAUBMAN**, who formulated a winning argument on one of the counts. The jury was out just over two hours before returning with the two-word verdict in a touch case. Great work, Brecken & Michael!

HEARSAY

SHOOTING: An Edmond police lieutenant shot and killed her brother.

PROGRAM: A community-based gun violence program has been launched in NE OKC.

APPOINTED: Associate District Judge Rafe Hall has been appointed District Judge by Gov. Stitt.

APPOINTED II: Gov. Stitt has appointed Melissa Handke to succeed Craig Ladd as District Attorney in Carter County; also, Carter County has a **new Assistant D.A.**

DENIAL: Cherokee Nation Attorney General Sarah Hill discussed the denial of certiorari in the *Hooper* case.

MOVE: Griffin Memorial Hospital is moving from Norman to OKC.

CAMS: NonDoc covers a story about OHP body cams and how to obtain them.

BOARD: The City of OKC has voted to establish a permanent Public Safety Advisory Board to review complaints made against police officers.

ARRESTED: A woman has been arrested for assaulting a Court of Civil Appeals judge in Tulsa.

FORFEITURE: The FAIR act from Congress which reforms civil asset forfeiture, which has rankled law enforcement agencies.

UNCLEAR: The Oklahoma County District Attorney has cleared six officers of the OKCPD, but it remains unclear what action the Department will take.

ARRESTED: A Canadian County Deputy has been arrested after an accusation of sexually assaulting a woman he was transporting to jail.

CERT: The Oklahoma Attorney General has filed a brief in support of Richard Glossip's petition for cert to the Supreme Court.

WACKY CRIME

TULSA: A Tulsa man stabbed another man in the head...with a flagpole.

TULSA II: A Tulsa man vandalized 15 police cars.

OKC: Despite leading OKC police on a chase...a driver still managed to keep hold of his beer.

HEAT: Some roads in Tulsa have buckled under the heat.

RETRACTION: There are retractions...then there is this.

NORMAN: A man stipulated to violating his probation...then fled the courthouse. He did not get away.

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.