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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

[Mills v. State](#), 2024 OK CR 22 (August 15, 2024): **Deferred Sentences:** Odd acceleration case out of Tulsa County where district judge Hon. Dawn Moody took judicial notice of preliminary hearing evidence in a separate criminal case as a basis to accelerate the deferred. She did not review the transcript of the preliminary hearing, rather she actually attended it and observed the testimony and relied on that. This fact distinguishes the usual use of preliminary hearing transcripts being admitted at acceleration hearings. The Court held this was improper, incompetent evidence, and thus reversed the acceleration order. NOTE: This is a good win for appellate counsel, Ariel Perry, OIDS.

[P.J. v. State](#), No. J-2024-334 (Okl.Cr., August 15, 2024) (unpublished): **Juveniles & Y.O.**: In this Youthful Offender case out of Comanche County, the Hon. Emmit Tayloe sentenced the accused to an adult sentence. P.J. objected on the basis that the State had waived its right to do so by failing to move for adult sentencing timely under the statute. In this opinion, the Court agreed, and reversed and remanded for sentencing under the Youthful Offender Act. NOTE: Judge Lumpkin specially concurred with a written opinion.

[Kevin Ray Berkley v. State](#), No. M-2023-545 (Okl.Cr., August 8, 2024) (unpublished): **Waiver (Right to Jury)**: In this misdemeanor bench trial case out of Bryan County (the Hon. Emily Redman, presiding), the conviction is reversed because of the lack of a record indicating waiver of the right to jury trial. NOTE: This is a recent win by yours truly.

TENTH CIRCUIT

[United States v. B.N.M.](#), No. 24-9900 (10th Cir., July 10, 2024) (Published) (Holmes, C.J., McHugh & Eid): **Juveniles & Y.O.**: A juvenile male was accused of participating in the murder of his girlfriend's parents. He was 15 at the time and the district court transferred him to adult status. This opinion is an interlocutory appeal challenging that decision, and the panel

[United States v. Alexander Nicholas Sweet](#), No. 23-5049 (10th Cir., July 9, 2024) (Published) (Phillips, Kelly & Federico) (N.D. Okla.): **Indictments; Jury Instructions (Grooming Definition); Prosecutorial Misconduct; Cumulative Error**: Several counts involving enticement and sexual activity with a minor are affirmed over claims relating to: 1) enticement charge insufficient because the indictment provided inadequate notice of the underlying facts; 2) violation of Rule 605 by the district court defining the term "grooming" in the jury instructions; 3) prosecutorial misconduct in closing arguments; and 4) cumulative error.

[United States v. Salvador Salas, Jr.](#), No. 23-8027 (10th Cir., July 3, 2024) (Published) (Phillips, Seymour & Murphy): **Search and Seizure (Warrants; Inevitable Discovery)**: In this possession of child porn case, a warrant was found invalid, but fruits not suppressed because of the "inevitable discovery" doctrine.

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. Jesus Soto Parra](#), No. 23-50487 (5th Cir., August 5, 2024): **Federal Sentencing Guidelines (Obstruction of Justice)**: Plain error found in application of a sentencing enhancement for obstruction of justice.

[United States v. Ahmad Sayed Hashimi](#), No. 22-7190 (4th Cir., August 2, 2024): **IAC (Conceding Guilt)**: The Accused was convicted of four criminal counts, but trial counsel had conceded guilt on two counts. The district court denied 2255 relief, but the panel reversed and remanded for further factual development.

[United States v. John Doe](#), No. 23-4330 (4th Cir., August 2, 2024): **Search Warrants (Attorney Files)**: Interesting opinion dealing with a search warrant where the Government seized attorney files containing privileged information. Doe was unhappy with the protocols of the Government to avoid disclosure and sought to appeal. The panel held that it had no jurisdiction for this interlocutory appeal, but the discussion is interesting and it is instructional that these issues are not immediately appealable (although there are exceptions which the panel held were not present here). NOTE: Judge Quattlebaum concurred, but expressed concern about this process.

[United States v. Randy Price](#), No. 22-4609 (4th Cir., August 6, 2024) (*en banc*): **Second Amendment**: The district court found that the recent Supreme Cases rendered the statute outlawing possession of a firearm with an obliterated serial number unconstitutional. However, in this *en banc* opinion the entire Fourth Circuit reversed, holding that this conduct is not within the scope of conduct enshrined in the Second Amendment because such a weapon is not in use for lawful purposes.

VICTORIES

MJ DENMAN, Tulsa, represented a client in Rogers County where the prosecutors, Isaac Shields and George Gibbs, spied on the deliberating jury. After nearly two years, Judge Linda S. Thomas granted a mistrial based upon this misconduct. The order can be read [HERE](#). The Supreme Court is still deciding what to do regarding the law licenses of these two. Nice work, MJ!

HEARSAY

[WARRANTS](#): The City of Walters is holding a first-ever warrant forgiveness program.

[OHP](#): OHP has announced a “Make Our Shoulders Safe Again” campaign which focuses on enforcement of the law requiring drivers to move or slow down when passing an emergency vehicle stopped on the side of the road.

[CROSS](#): The Okmulgee Police Department and the Muskogee Nation Lighthorse Police have signed a cross-deputization agreement.

[MURDER WAS THE CASE](#): Z94 in Lawton has named Oklahoma’s Most Brutally Notorious Murderers.

[BOOK](#): Retired OSP Warden Dan Reynolds has a new book titled “The Warden’s Mansion.”

[CRUISER](#): A captain with the Tulsa Police Department showed off his non-standard police cruiser.

[MISSING](#): A Norman Police Department canine ran off during storms and police are looking for him.

[SPEED](#): A driver speeding along the Kilpatrick Turnpike at 114 mph got tagged with a \$449.00 ticket.

[BROKE](#): The Pryor Police Department may face budget cuts because of a decrease in sales tax revenues.

[ANNIVERSARY](#): The OSBI will celebrate its 100th anniversary next year.

NEW CHIEF: The City of Oklahoma City has selected a new Chief of Police.

THIEVES: Thieves broke into a Wagoner police cruiser to steal guns.

JUVIES: The Rogers County Sheriff is forming a juvenile diversion team consisting of multiple agencies to keep juveniles out of the justice system; also, more allegations of wrongdoing at the Tulsa Juvenile Justice System have emerged, including the existence of a **fight club**.

SETTLEMENT: The City of Edmond has agreed to pay \$7 million to a wrongfully convicted death row inmate.

APPOINTED: Attorney Bobby Don Gifford has been selected to be a justice on the Pawnee Nation Supreme Court.

WACKY CRIME

BUSTED: An attorney in Jackson, Mississippi, has been accused of smuggling cell phones and other contraband into the local jail. Notable is the photo of the accused, whom Mark Hoover says “looks like a trial attorney.” Take a look...for whenever you’re having a bad day.

TRAPPED: A woman called police and reported being trapped...in a coal car on a train traveling through Amarillo, Texas.

RAIN: A man assaulted his girlfriend as he was driving her to the hospital...he was upset that his car was getting wet from rain.

OKC: An OKC man has been arrested for being a felon in possession and justified his gun as...used for shooting turtles.

ANNOUNCEMENT: An inmate at the Woods County Jail announced that the toilet was broken...as he was in the middle of breaking it.

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