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Category



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

[Isaiah Decayla Lopez v. State](#), No. F-2023-286 (Okl.Cr., August 17, 2023) (unpublished): **Self-Defense**: Lopez appealed an order out of Pawnee County denying immunity from criminal prosecution under the Stand Your Ground law by the Hon. Michelle B. Keely. The Court affirmed, but I included the Opinion because it contains the relevant law in this area if any of you have this issue and need to appeal.

[Cedrych Steffan Young v. State](#), No. F-2022-366 (Okl.Cr., August 17, 2023) (unpublished): **Jurisdiction (Police)**: Young was convicted of Eluding in Beckham County (the Hon. Michelle Kirby-Roper, presiding). The Court

affirmed, but the Opinion contains a good discussion of police jurisdiction and “hot pursuit” since the arrest was effectuated in Oklahoma by a Texas police officer.

[Bobby Jermaine Foreman v. State](#), No. F-2021-673 (Okl.Cr., August 17, 2023) (unpublished): **Fines:** Foreman was convicted by jury of Rape in Rogers County (the Hon. Stephen R. Pazzo, presiding). The Court affirmed, but vacated a fine that had been imposed by the trial court, even though the jury had not imposed a fine.

[United States v. William James Forbis](#), No. 23-CR-133-GKF (N.D. Okla., August 17, 2023): **Possession (Firearm by Felon); Second Amendment:** This is an order granting the motion to dismissed filed by the accused in a felon-in-possession of firearm case on Second Amendment grounds.

[Alonzo Cortez Johnson v. William “Chris” Rankins, Warden](#), No. 16-CV-433-TCK-CDL (N.D. Okla., August 8, 2023): **Peremptory Challenges:** This is a nice win from yours truly in a federal habeas remand from the Tenth Circuit on a *Batson* claim where the State tried to “reconstruct” the racial reasons for the strikes at the original trial. The district court held that it could not be reconstructed and granted habeas relief. NOTE: The State has filed notice of appeal, but I think it will survive.

TENTH CIRCUIT

[United States v. Quindell Tyree Maloid](#), No. 21-1422 (10th Cir., June 23, 2023) (Published) (Phillips, Murphy & Eid): **Federal Sentencing Guidelines (Guideline Commentary):** In this felon-in-possession case, a predicate felony was conspiracy to commit crimes of violence. The Guidelines Commentary increases the range even in conspiracy cases. The legal issue is to what extent the Circuit has to respect the Commentary. A Supreme Court case has splintered the Circuit Courts of Appeals on this issue, but the Tenth Circuit held that the Commentary will govern unless it is unconstitutional, contrary to statute, or plainly erroneous. Thus, for now, in our Circuit the Commentary is going to be pretty much a binding construction.

[United States v. Derald Wilford Geddes](#), No. 22-4053 (10th Cir., June 23, 2023) (Published) (Barcharach, Kelly & Briscoe): **Restitution; Supervised Release:** In this tax fraud/evasion case, an order of Restitution is reversed because district courts do not have inherent authority to order restitution, and there is no statute

allowing it in tax cases. Also, the panel vacated some conditions of supervised release that were not pronounced orally but added to the written judgment.

[United States v. Jimcy McGirt](#), No. 21-7048 (10th Cir., June 20, 2023) (Published) (Hartz, Kelly & Moritz) (E.D. Okla., the Hon. John F. Heil, III): **Jury**

Instructions (Inconsistent Statements): Convictions for sexual assault are reversed based on jury instructions regarding prior inconsistent statements of Government witnesses used for impeachment only (rather than substantive evidence). NOTE: This is the McGirt in the Supreme Court case that launched the jurisdictional mess in Indian Country.

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. Patrick Darnell Daniels, Jr.](#), No. 22-60596 (5th Cir., August 9, 2023): **Second Amendment:** Indictment for “drug user” in possession of a firearm is dismissed based on the Second Amendment.

[United States v. Vinson Lee Willis, Jr.](#), No. 22-10384 (5th Cir., August 7, 2023): **Federal Sentencing Guidelines (Ambiguous Sentence):** In this felon-in-possession of firearm case, the sentence is vacated as ambiguous.

VICTORIES

WARREN GOTCHER, McAlester, secured a not guilty verdict for a client facing 5 counts of Sexual Battery. The jury convicted on a single misdemeanor count of simple assault. Nice work, Warren!

CARTER JENNINGS, OKC, recently secured a 14-minute Not Guilty verdict in a rape case out of Murray County. Nice job, Carter!

TRAVIS CROCKER, McCurtain County OIDS Contractor, secured a Not Guilty verdict for a client charged with Felon in Possession of a Firearm and Possession of Marijuana. Apparently Travis has a knack for these cases, having won several trial in felon-in-possession cases. Great work, Travis!

SHELLEY LEVISAY & JOE ACOSTA, Shawnee, put in work in Okfuskee County for a client accused of Burglary 2 and KCSP, a full acquittal on both counts. Good job, Shelley and Joe!

HEARSAY

BOARD: The Oklahoma Supreme Court has appointed retired judge Robert E. Reavis to the Pardon and Parole Board; also, another vacancy has been filled by former District Attorney **Kevin Buchanan**.

RESIGNED: The Sheriff of Seminole County has resigned.

SURVEILLANCE: The City of Lawton will install more cameras to find uninsured motorists (with an amusing last paragraph).

RIP: There have been a couple of deaths of attorneys in vehicle accidents. **Rod Ramsey** was killed in a motorcycle crash in Kay County; former Kingfisher ADA **Tamara Hurd**, who had recently been doing criminal defense work in Logan County, also was killed in a car crash.

INDICTED: Ardmore attorney Jason May has been indicted by a grand jury for fabricating documents for recordation. Jason is an active and effective advocate down south and I hope he defends this charge.

NUMBER ONE: Oklahoma ranks number one in the country for rates of domestic violence.

JAIL: Despite a number of improvements, conditions at the Oklahoma County Jail remain substandard.

NAMED: Jacobi Whatley has been named First Assistant District Attorney in Carter County.

WACKY CRIME

TULSA: Someone burgled the Tulsa P.D.'s Rescue Trailer.

HACKED: A man hacked the Snapchat account of a teacher, downloaded her nude selfies, and tried to trade them for other photos.

COMBO: An odd combination of crimes according to this headline: Del City Police Say A Woman Died After Having Sex With Her Brother At An Elementary School Playground.

NORMAN: A pit bull christened "Bonnie the Bandit" has been stealing pillows, toys, shoes, and other items from residents in Norman.

IRONY: A District Director of the Oklahoma Game Fowl Commission...has been charged with cockfighting.

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