

OCDW 09.06.22

Category

O • C • D • W

OKLAHOMA CRIMINAL DEFENSE WEEKLY

www.ocdw.com

09.06.22

[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

[In Re: Adoption of the 2022 Revisions to the Oklahoma Uniform Jury Instructions—Criminal \(Second Edition\)](#), 2022 OK CR 20 (August 29, 2022): The Court has tweaked and updated the jury instructions, including changing pronouns (seriously) and including instructions on the crime of Failure to Register as a Violent Offender and making some changes/additions to several crimes against children.

[O’Connor v. Oklahoma State Conference of NAACP](#), 2022 OK CR 21 (August 25, 2022): **Riot; Statutory Construction:** In this rare certified question case (the Tenth Circuit sent legal questions to the OCCA), the Court construed Oklahoma law regarding rioting and held that 21 O.S. 1312(5) applies only to individuals who

are guilty of participating in a riot; and 21 O.S. 1320.12 imposes liability only on organizations that have been found guilty of conspiring with others to violate anti-riot laws.

[Joe Gilbert Calvert v. State](#), 2022 OK CR 19 (August 25, 2022): **Felony Murder; Extraordinary Writs**: Calvert was convicted by jury in Tulsa County (the Hon. Clifford Smith, presiding) of First Degree Felony Murder where the decedent was kidnapped in Tulsa, but driven to another state and was killed. The Court affirmed, rejecting several challenges to the felony murder statute to these facts as well as to jury instructions. **NOTE**: Calvert had sought a writ pre-trial regarding whether the State had jurisdiction to prosecute a felony murder case where the death occurred in another state, and the OCCA had denied the writ. In this appeal, the Court treated that pre-trial ruling as conclusive. Judge Lewis dissented to the *res judicata* effect of the writ decision.

[State v. J.B.](#), 2022 OK CR 18 (August 25, 2022): **Juveniles & Y.O.**: J.B. was charged with Second Degree Murder and three counts of A&B. The State filed a motion for imposition of adult sentence, which was denied by the Hon. Lydia Green, Special Judge (Oklahoma County). The State appealed. In this opinion, the Court reversed, based primarily on the fact that J.B. would age out of the juvenile system and statements of intent made by the Legislature in an amended statute.

[State v. Breznai](#), 2022 OK CR 17 (August 18, 2022): **Search and Seizure (Traffic Stops); State Appeals**: In this State appeal out of Custer County, the Hon. Jill C. Weedon granted a motion to suppress on a traffic stop and dismissed. In this opinion, the Court reversed, holding that the stop was justified at its inception when the officer suspected the motorist of driving in the passing lane slowly and without passing.

[State v. Ward](#), 2022 OK CR 16 (August 18, 2022): **Indians**: The district court of Mayes County dismissed an A&B on a Police Officer charge under *McGirt* that occurred in Indian Country (Cherokee Reservation) and the police officer was an Indian, but Ward was not. The Court reversed based upon the SCOTUS decision in *Castro-Huerta* which was decided while the case was pending.

[Nicholaus Mark Oliver v. State](#), 2022 OK CR 15 (August 11, 2022): **Domestic Abuse**: Oliver was convicted by jury (the Hon. Paul Hesse, presiding) of Domestic Abuse by Strangulation in Canadian County. The Court affirmed over claims relating to: 1) vouching by a nurse; 2) denial of a *Daubert* hearing on the nurse testimony; 3) testimony outside the area of expertise of a State witness; 4) burden-shifting arguments by the prosecutor; 5) defining “great bodily harm” in response to a jury question (error but harmless); 6) IAC for failing to request a

continuance; 7) sufficiency of the evidence; and 8) cumulative error. NOTE: Judge Lewis concurred in part/dissented in part on the basis the jury instruction given was sufficient.

[Ashley Nicole Tookalo v. State](#), No. F-2020-849 (Okl.Cr., August 25, 2022) (unpublished): **Causation; Sufficiency**: In this First Degree Murder case out of Oklahoma County (the Hon. Richard W. Kirby, presiding), Tookalo asserted that there was insufficient evidence of Murder in the First Degree because there was no commission of a felony taking place at the time of the death. Court affirmed, concluding that the homicide occurred as part of one continuous transaction to carry out collection of drug proceeds. NOTE: Judge Musseman was the lone dissenter, concluding that the Appellant was not still in the commission of either drug distribution or robbery when the death occurred.

IRONY: As some have pointed to me, the OCCA has re-instated the conviction and sentence of Tommy Ward of “Innocent Man” notoriety.

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.

VICTORIES

BRET BURNS, Chickasha, secured a quick acquittal in Grady County in an embezzlement case. Great job, Bret!

HEARSAY

RIP: Court of Civil Appeals Judge Keith Rapp has passed.

ANALYSIS: The Frontier analyzed the Castro-Huerta ruling from SCOTUS.

ANALYSIS II: The Frontier also analyzed the effects of drugs taken during pregnancy and the legal fallout from it.

RETIRING: Oklahoma's first black female trooper is retiring.

JAIL DEATH: An inmate died at the Choctaw County Jail.

CHARGED: OSP Correctional Officers have been charged with varying offenses stemming from the assault of a restrained inmate.

SPEED: Speed limits on rural roads in Oklahoma County are being lowered because of growth of OKC.

DISMISSED: Charges against a former Oklahoma City police officer have been dismissed when a complaining witness contradicted herself.

JAIL DEATH II: The Oklahoma County Jail has had its 13th inmate death of the year.

SMUGGLING: Four persons have been charged with smuggling contraband into the Choctaw County Jail—including two inmates.

PROGRAM: Comanche County will be the first of three counties to participate in a “Veterans Justice Outreach” program funded by the federal government.

PURCHASE: Pauls Valley police have purchased some “high powered pepper guns” as a less lethal alternative to conventional firearms.

PURCHASE II: The Haskell County Sheriff's Office will purchase some ballistic shields in respond to school shootings.

ANKLE MONITORS: This news story points out a flaw in ankle monitors—the batteries can die.

PROSECUTION: The case against Brent Swadley and his “Foggy Bottom Kitchen” operation is moving forward.

FREQUENT FLYER: A man who has had more than 20 stays in the Oklahoma County Jail—has been arrested yet again.

EXPANSION: The expansion of the Rogers County Jail should be complete in February, 2023.

ARSON: The massive sanitizer fire in Chickasha was set intentionally.

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

NEW DIRECTOR: The OSBI has announced its new permanent Director.

SUSPENDED: A deputy in Cherokee County has been suspended after injuring a handcuffed arrestee at the county jail.

SUED: The City of Tulsa is being sued for its officer-involved shootings.

STORY: Interesting story about a young lawyer in Muskogee who went through law school twice and who plays the violin to relax.

ARRESTED: A man arrested in Logan County looks like a maimed/disfigured veteran of WWI.

RIP: A Captain with the Osage County Sheriff's Office has been killed in a car crash.

PRO SE: A woman wishing to represent herself has sent a hand-written letter to KFOR news, a move that, according to defense attorney Ed Blau, is not helpful.

NEW EVIDENCE: The Intercept took a look at newly-discovered evidence in the Glossip case in this long, but interesting article. Gov. Stitt has **granted** a 60-day stay of execution.

SUSPENDED: After announcing his resignation, District Attorney Allan Grubb has suspended himself as well.

TEACHING: Pontotoc County District Attorney Paul Smith had been teaching government at a local high school, which has apparently created some problems.

HONORED: LeFlore County District Attorney Jeff Smith was honored by the Association of Oklahoma Narcotic Enforcers.

HONORED II: District Attorney Jack Thorp has named Haley Robinson as Regional II Prosecutor of the Year.

FASCINATION: The press reports on the public's interest in the last meals of the condemned.

COLD CASE: The Oklahoma City PD is examining a cold case from 1975.

COLD CASE II: An OKC cold case murder may have been solved with DNA.

MENTAL ILLNESS: In this long, but interesting story, Oklahoma County Public Defender Rob Ravitz described mental illness as a civil problem rather than criminal, which should be addressed accordingly.

BUST: The Tulsa PD recently made the largest fentanyl bust in department history. Tulsa County DA **Steve Kunzweiler** says that the fentanyl in Tulsa is coming from Mexico. Also, deputies in **Canadian County** found 13.5 pounds (60,000 pills) of fentanyl.

MABEL BASSETT: Interesting story of the real Mabel Bassett, the first Police Matron of Sapulpa and the namesake of one of our women's prisons.

ARRESTED: In this cautionary tale, an attorney in Shawnee, KS, has been convicted of smuggling heroin into a state prison in Missouri by including it in "Legal Mail" and it appears that she was romantically involved with the inmate.

VIDEO: Gov. Stitt has signed a bill that prohibits the release of any video showing the death of a law enforcement officer in the line of duty without a court order.

SEIZED: A game warden in Atoka County has seized "electrofishing devices" on Hugo Lake.

RETIRED: The Director of DOC has announced his retirement.

DRAMA: Interesting story of forgiveness and redemption out of Garvin County.

INVESTIGATION: Oklahoma County DA candidate Kevin Calvey is being investigated for campaign violations.

DRONES: Oklahoma is one of the most drone-friendly states in the country.

WACKY CRIME

OKC: An OKC man accused of making a bomb threat at an apartment complex resisted arrested. One could say he fought the law...and you know the rest.

ARRESTED: A "Sovereign Citizen" couple, complete with a Sovereign Citizen "American National" license plate, have been charged with Child Stealing in Payne County.

NOT FOOLED: Police in Tulsa were not fooled by the krylon paint job performed on a stolen car to disguise it.

SHROOMS: A nude woman ate mushrooms, or was she nude first?

MWC: A teenager in Midwest City gave a boy a bad haircut...so the boy's father pulled a gun.

PROGRESS: On a Tuesday, a man was pulled over by OKC police for going 81 in a 45 mph zone. Then on Wednesday, he was pulled over for going 96 in a 55 mph zone.

TULSA: A Tulsa man crashed his car into another car, pulled out a gun on the other occupants, and then drove off. Alcohol may have been involved.

TULSA II: A man in Tulsa went Ernest T. Bass and threw rocks at passing cars.

TULSA III: Tulsa has a haunted...parking lot.

ROCKS AGAIN: A person had a political disagreement with a candidate for Labor Commissioner and again went Ernest T. Bass on him by throwing a brick through a window of his home.

BURGLED: A burglar stole jewelry and...the badge of a Wilburton police officer.

WATER BANDIT: A "water bandit" tapped into an OKC water line and stole water...to fill up his upscale community's lake.

AMARILLO: A man dressed as either a reindeer or a dog drove a pick-up truck into an Amarillo, TX, liquor store to steal some booze, with photo of said reindeer or dog.

OHP: OHP is competing in the 9th annual "America's Best Looking Cruiser" contest.

BRIARS: A fleeing felon in Marshall County ran through a briar patch...and the story shows what happens when you run through a briar patch.

THE WAL-MARTS: Alva man accused of underpaying for two crossbows...you would think a Wal-Mart cashier would know the difference between a child's toy and an adult's, but no.

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: ©2005-2022 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.