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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

[Taylor v. State](#), 2024 OK CR 26 (August 29, 2024): **Jury Instructions (85% Rule); Credit for Time Served:** Taylor was convicted by jury in Osage County (the Hon. Stuart L. Tate, presiding) of Lewd Molestation and Sexual Battery. The Court affirmed over claims relating to: 1) improper 85% Rule instruction; 2) prosecutorial misconduct in statements made during *voir dire*; and 3) no credit for time served because of indigence because credit for time served is not applicable to life sentences.

[Barkus v. State](#), 2024 OK CR 25 (August 29, 2024): **Indians:** Barkus was tried at a bench trial in Hughes County before the Hon. Trisha D. Smith and found guilty of Possession of Firearm AFCF, DUI, and Carrying Firearm Under the Influence.

Barkus defended primarily on *McGirt*, alleging that he was an Indian, but was unable to produce any evidence of blood quantum other than a DNA test. The Court did not rule out such evidence as being sufficient, but stated that expert testimony would be required on the state of DNA technology on this topic.

TENTH CIRCUIT

[United States v. Rondell Yokenya Baker](#), No. 23-8042 (10th Cir., July 23, 2024) (Published) (Phillips, Kelly & Federico): **Search and Seizure (Traffic Stops)**: Denial of a motion to suppress is affirmed when police gave a warning for speeding, but suspected drug activity and followed the driver for 50 miles so that the drug dog would be available and then made a pretext stop for speeding again, the dog alerted. NOTE: Judge Federico penned a strong dissent critical to this type of tactic.

[United States v. Eligius Montano](#), No. 23-2030 (10th Cir., July 23, 2024) (Published) (Rossman, Kelly & Murphy): **Federal Sentencing Guidelines (Brandishing; Reckless Endangerment; Criminal History); Law of the Case/Mandate Rule**: The panel affirmed enhancements for brandishing (placing hands under clothing to mimic a gun) and Reckless Endangerment for instructing the getaway driver to drive recklessly; but reversed a criminal history calculation based on priors. Note footnote 21 where the Government asked for a new evidentiary hearing on remand, but the panel refused to allow this because the Government had a chance to present its evidence but failed to do so below.

[United States v. Craig Wallace Wood](#), No. 23-5027 (10th Cir., July 23, 2024) (Published) (Phillips, Seymour & Murphy) (N.D. Okla.): **Indians; Evidence (Business Records)**: In this prosecution for crimes committed in Indian Country, the Government sought to admit self-authenticating documents that Wood was an Indian in an untimely manner under Rule 901. In this opinion, the panel found this was error and reversed. NOTE: Judge Phillips dissented, finding no abuse of discretion.

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. Christopher Dallas Nelson](#), No. 23-50449 (5th Cir., September 6, 2024): **Supervised Release:** In this possession of child porn case, a condition of supervised release prohibiting all internet use for life is vacated under Circuit precedent and remanded for a narrowly tailored version of this. NOTE: There is a concurrence and a dissent raising interesting aspects of this issue.

VICTORIES

SCOTT LOFTIS, Ponca City, has been on a heater. A couple of weeks ago he scored a not guilty verdict at a jury trial, then last week, against the same prosecutorial team, he beat six counts including Trafficking, Possession w/Intent, Possession, Conspiracy plus other lesser charges—all not guilty verdicts. Client was driver of a car and the State's witnesses included two passenger co-defendants. Great job, Scott!

TERRY ALLEN, Pryor, was about to start a jury trial in Delaware County, defending a client charged with rape, when prosecutor Doug Pewitt had waited until the last minute to disclose discovery. The Hon. Jennifer McAffrey dismissed the case as a sanction, which is the second time that she has done such a thing. I am told that when the prosecutor confronted Judge McAffrey and threatened to bring in the victim so that the judge could look her in the eye when she dismissed the case, the response was that would be fine and she would explain to the victim that the case was being dismissed because the State cannot follow the law.

HEARSAY

“THE GRAPPLER”: Broken Arrow now have “The Grappler” to stop fleeing suspects.

ARRESTED: An LCF Correctional Officer has been arrested for sexual battery of an inmate of the Lawton city jail.

OVERLOOKED: A man being booked into the Lincoln County Jail for DUI somehow took a gun inside, which he tried to use against a deputy.

NAMED: The Oklahoma Supreme Court has named the new Administrative Director, replacing Jari Askins.

E-FILING: The Oklahoma Supreme Court has also announced e-filing capability in civil cases in select counties.

STAFF: The Frontier examined the chronic understaffing at the Oklahoma County Jail.

TAX: Oklahoma County may implement a county-wide sales tax to fund the jail.

SWORN: New Lincoln County District Judge Sarah Bridge has been sworn in.

REGISTRATION: Here is what you need to know about registering a vehicle in Oklahoma.

SKILLS: The Jess Dunn Correctional Center has partnered with a local metals company to teach inmates job skills.

JOB CHANGE: The Director of OJA has left that position to head DHS.

MENTAL: According to media reports, Garfield County Judge Brian Lovell may have dementia.

IDAP: The new Mason Treat Act interferes with IDAP.

ARRESTED: Jimcy McGirt has been arrested in Seminole County for failing to register as a sex offender.

FILED: The first application for sentencing relief under the Oklahoma Survivor’s Act has been filed in Tulsa County.

WACKY CRIME

HORSE: A horse trainer is wanted by police for assaulting a man at Remington Park...with a horse.

UNRULY: A first-class passenger heading to Dallas found himself in the Tulsa County Jail...for refusing to stop vaping on the plane.

CONFUSION: A Georgia man stole cash from a Wal-Mart in Duncan, Oklahoma...by “confusing” employees.

OKC: Crime does not pay...when your lookout falls asleep.

LAWTON: A teen with a baseball bat damaged cars at a Lawton auto dealership.

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