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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

[Aaron Koomsa, Jr., v. State](#), No. F-2023-167 (Okla. Cr., September 7, 2023) (unpublished): **Self-Defense**: This is an appeal from a pre-trial order denying a motion for immunity from prosecution under the Stand Your Ground law out of Comanche County (the Hon. Grant Sheperd, presiding). The Court affirmed on case-specific facts, but I included the opinion because this is a frequent topic on the listserv and these opinions contain the law and procedures if you have such a case.

TENTH CIRCUIT

[United States v. Kenneth Lamar Lee](#), No. 21-6167 (10th Cir., June 27, 2023) (Published) (McHugh, Eid & Carson) (W.D. Okla., Hon. Scott L. Palk): **Federal Sentencing Guidelines (Reasonableness)**: Sentence vacated because the district court failed to apply the Guidelines to consider whether a downward adjustment for a period of imprisonment already served on the undischarged term of imprisonment.

[United States v. Jeffery Arch Jones](#), No. 21-5079 (10th Cir., June 26, 2023) (Published) (Moritz, Seymour & Ebel) (N.D. Okla., Hon. Gregory K. Frizzell): **Prosecutorial Misconduct (Vouching)**: Convictions for sexual assault are reversed for improper vouching by Government witness (mother of the complaining witness) for the credibility of the complaining witness.

[United States v. Michael Lamont Phillips](#), No. 22-5053 (10th Cir., June 26, 2023) (Published) (Hartz, Seymour & Matheson) (N.D. Okla., Hon. Claire V. Eagan): **Search and Seizure (Traffic Stops)**: Denial of motion to suppress on a traffic stop is affirmed where police had reasonable suspicion for the stop (reckless driving, driving without a seatbelt, driving without a license); and probable cause to search the vehicle (odor of alcohol/marijuana).

[Justin Hooper v. The City of Tulsa](#), No. 22-5034 (10th Cir., June 28, 2023) (Published) (McHugh, Eid & Carson) (N.D. Okla., Hon. Jodi F. Jayne): **Indians**: This is the case where the Circuit held that *McGirt* applies to the municipality City of Tulsa.

[United States v. Paul DeWayne Gallimore, Jr.](#), No. 22-6081 (10th Cir., June 28, 2023) (Published) (McHugh, Eid & Carson) (W.D. Okla., Hon. David L. Russell): **Federal Sentencing Guidelines (ACCA)**: Under the Armed Career Criminal Act, three separate bank robberies at different banks in three days (one on each day), constitute three separate priors.

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. Steven Anthony Reinhart](#), No. 22-10103 (5th Cir., August 16, 2023) (*per curiam*): **Restitution; Waiver (Appeals Waiver)**: A guilty plea to misprision of felony (wire fraud) resulted in a massive restitution award of over \$40 million. The panel found that the appellate waiver was not valid because it encompassed sentence over that statutory maximum; and also vacated the restitution amount for further factual findings related to his actual criminal conduct.

[United States v. Nickless Whitson](#), No. 22-5462 (6th Cir., August 10, 2023): **Resentencing Hearings**: Whitson was convicted of multiple offenses resulting in a sentence of 1,252 months; however, some counts were vacated on appeal and remanded for resentencing. The split panel vacated yet again because the district court required him to admit guilt in order to consider fully the evidence of his rehabilitation.

[State of New Jersey v. Darryl Nieves](#), No. A-2069-21 (Sup. Ct. N.J., App. Div., September 13, 2023): **Shaken Baby Syndrome**: Instructive case where the appellate court affirmed a district court decision to preclude SBS evidence as unreliable.

DR. JORDAN PETERSON

[Dr. Jordan Peterson](#) is a Canadian psychologist who famously critiqued a law that required a person to use the preferred pronouns of another or face criminal penalties. He went on to participate widely in social media, including YouTube and Twitter (X), expressing his opinions about pronouns, wokeness, political correctness, and occasionally psychology.

His presence on social media and the statements he made, including a few stints on Joe Rogan's podcast, caught the attention of the College of Psychologists of Ontario, which is in charge of his license to practice. The College ordered him to participate in a "coaching program" (which some wags have described as a re-education camp) ostensibly to address his social media comments and his attitude.

Dr. Peterson sued the college in a Canadian court, which sided with the College, concluding that although he still maintained a right to free speech under the Canadian Charter of Rights and Freedoms, the College could still place reasonable limits on it and order what it did. The opinion from the Superior Court of Justice Divisional Court in Ontario can be found [HERE](#).

The statements complained of seem innocuous to me as part of standard internet fair and commentary, but the governing boards of state licensing entities seem to have a higher sensitivity. Dr. Peterson has become a somewhat polarizing figure, and I present this situation without comment on his statements, but because the legal issue is interesting and I see parallels between his case and a case where a Bar Association might try to discipline attorneys for statements made on social media. I am not aware of any case like this involving lawyers, but I hope Dr. Peterson pursues other legal remedies because I would be interested in how the Supreme Court of Canada might analyze the issue.

Meanwhile, I suspect that state licensing bodies will view licensees as having a greater duty to care what they say in public (social media) and may be likely to address speech/comments they deem inappropriate for a license holder. Beware what you say.

VICTORIES

EMILY GROSSNICKLAUS & TAYLOR ELIZABETH

THOMPSON, Oklahoma County PD, scored a nice win with a weird twist in Oklahoma County. After spending 595 days at the county jail, the client was acquitted of murder—but the jail did not process him out until a day later. He was acquitted and had to spend another night in jail. Great job, Emily & Taylor!

CRYSTAL JACKSON, Tahlequah, represented a client accused of arson (setting fire to an unoccupied house). The jury found the client not guilty by reason of mental illness. Nice job, Crystal!

CODY GILBERT, OKC, scored a terrific not guilty verdict in the Western District for a client accused of drug conspiracy. Great work, Cody!

HEARSAY

DISCIPLINE: The latest disciplinary case from the Oklahoma Supreme Court has some wild facts.

BAR RESULTS: The recent results for the Bar Exam show that passing rates are improving.

SERVICE OKLAHOMA: Oklahoma Voice criticized Service Oklahoma for the way it handles Oklahoma driver's licenses.

WEBSITE: The Muscogee Creek Nation has a new website for its Attorney General/court system. Also, the Nation is expanding its **juvenile justice system**.

BUST: A police chase in Ardmore resulted in seizure of 270 pounds of stolen marijuana.

ATTACK: A man attacked a maintenance employee at the Oklahoma County Courthouse.

NEW FACILITY: A 330-bed mental health facility will be built in OKC (replacing Griffin).

TECH: All 30 police cruisers in Ardmore have "Digi-Ticket" technology which allows in-car printing of tickets rather than hand-writing them.

THEFT: A thief stole communications/navigation equipment from planes of a flight school in Goldsby.

FORGED: An OKC woman forged the signature of an Oklahoma County Assistant District Attorney in a ploy to get time off from work.

CONTRABAND: Two men planned a "Mission: Impossible"-style contraband drop at Lawton.

PROMOTION: A man got "promoted" from City Jail to County Jail by punching a correctional officer at the City Jail in Lawton.

FAIL: The Oklahoma County Jail has failed another Health Department inspection.

STABBING: An inmate was stabbed at Great Plains.

FIRE: A DOC bus, loaded with DOC employees, caught on fire on I-40.

COLD CASE: Defense attorney Ed Blau comments on the 36-year cold case of the two sisters who disappeared from the State Fair in 1987.

COVER-UP: Officials in Pottawatomie County may have covered up inmate deaths at the county jail.

CONSTITUTION DAY: Monday is Constitution Day, and Cameron University will celebrate by exploring the Fifth Amendment.

WACKY CRIME

OKC: Headline: “OKC Thieves Break Into Home, Steal Bizarre Items.”

TULSA: A Tulsa woman, frustrated with occupants fighting in her house, grabbed a pool cue and beat them with it.

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