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Category



OKLAHOMA CRIMINAL DEFENSE WEEKLY

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[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

No notable cases.

TENTH CIRCUIT

[United States v. Julian Manzano](#), No. 23-6073 (10th Cir., August 13, 2024) (Published) (Holmes, C.J., Seymour & Baldock) (W.D. Okla.): **Federal Sentencing Guidelines (Crime of Violence)**: Oklahoma conviction for Second Degree Murder is not categorically a crime of violence.

[United States v. Michael R. Capps](#), No. 23-3095 (10th Cir., August 13, 2024) (Published) (Hartz, Tymkovich & Bacharach): **Jury Instructions:** This is an odd case where the district court instructed the jury at the outset of the presentation of evidence without doing so again after the close of evidence. Unfortunately, Capps did not preserve this issue and could not meet the plain error burden.

[United States v. Elias Lucas Gallegos](#), No. 23-2010 (10th Cir., August 5, 2024) (Published) (Holmes, C.J., McHugh & Eid): **Eyewitness ID; Evidence (Flight):** Conviction for assaulting a federal officer with a dangerous weapon is affirmed over claims related to: 1) admission of eyewitness identification testimony (police did a show-up); and 2) admission of evidence of flight after the assault.

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. Paola Connelly](#), No. 23-50312 (5th Cir., August 28, 2024): **Possession (Firearm by Drug User); Second Amendment:** Connelly is a non-violent marijuana smoker. Police were called to her house to a “shots fired” call. Her husband had fired a shotgun. After arresting him, she admitted to the marijuana use and a sweep of the home revealed drugs and guns. She was charged with possessing firearms/ammunition by a drug user. The district court agreed that the statutes were facially unconstitutional and also unconstitutional as applied to her. In this opinion, the panel reversed the facial challenge, but affirmed the as-applied challenge under the Second Amendment.

VICTORIES

KEVIN ADAMS, CAMERON SPRADLING, LINDSEY ALBERS, ADAM S. BREIPOHL, and JOHN E. PRIDDY, all out of Tulsa, may have participated in a jury trial Seminole County that resulted in the acquittal of a former middle-school teacher accused of several counts of sex crimes against students. The docket sheet lists all of their names, but it is unclear who tried the case. But, great work and result regardless!

JACQUI L. FORD, OKC, represented a client in Oklahoma County charged with Lewd Acts. There were some hearsay problems and Special Judge Lori Puckett granted the demurrer and dismissed the case in this **ORDER**. Prior to that, she did a phenomenal job on a sentence modification in a tough case that resulted in the client going home. The memorandum she prepared and filed can be seen **HERE**. Finally, in Pottawatomie County, Jacqui and Nik Lee represented a woman charged with Enabling Child Sexual Abuse. Client was a nurse with a minor teen son who was sneaking in his 18-year-old girlfriend. The State wanted conviction with sex offender registration, but thanks to Jacqui and Nik the main count was demurred out at PH by Judge Mueller, and a reasonable prosecutor resolved the case with a misdemeanor and an expungement. Outstanding job, Jacqui and Nik!

WINSTON CONNOR, Miami, secured a dismissal for his client charged with several sex offenses when Judge McCaffrey granted a demurrer at trial to all five counts on the basis that the defense had exposed so many issues and problems through cross-examination that no reasonable jury following the law could ever find the accused guilty. Could it be that justice has broken out in Delaware County? Amazing win, Winston!

DAN POND, Norman, won a motion to dismiss for violation of Due Process in a case set for jury trial in Comanche County for dilatory tactics.

ROYCE HOBBS, Stillwater, won a hard-fought DUI trial in Payne County, featuring two jury notes that they were deadlocked and five hours of deliberations and a heated exchange between Royce and the DRE expert. After the Allen instruction, the jury reached a compromise verdict of not guilty of DUI, but convicted of DWI and given a \$100.00 fine, and guilty on misdemeanor Child Endangerment because of children in the car but only a \$500.00 fine, but that charge required a DUI finding so there were conflicting verdicts. Bottom line, client went home. Good job, Royce!

KIM MILLER, Norman, represented co-defendant parents accused of Child Neglect. State called three witnesses, defense called ten. Although the prosecutor requested a fine only during closing arguments, the jury acquitted both. Nice job, Kim!

ANDREW CASEY, Tulsa, won a motion to suppress in the Northern District before the Hon. John Russell in a case involving an automobile search. The order with fancy font can be read [HERE](#). Great job, Andrew!

CATHY HAMMARSTEN, OKC, argued a motion to dismiss, a motion to continue, and a motion to remand before Judge Walker. Kyle Cabelka argued for the State. The judge granted the motion to remand for further PH. Cathy is going at it pro bono with assistance from a non-profit law firm that assists women who are facing criminal charges related to pregnancy. Cathy and Vicki Werneke are retired public defenders with fight still left in them as Vicki said, so if you have such a case give them a call. Great work, Cathy!

HEARSAY

SHERIFF SHOOTS JUDGE: A bizarre story out of Kentucky where a county sheriff shot and killed a district judge inside the judge's chambers after an argument.

PROGRESS: A Tulsa County Public Defender says progress is being made at the Tulsa County juvenile detention center.

ARRESTED: A school teacher in Miami has been arrested for beating up two teenagers.

FLIGHT: As Mark Hoover said about this story, you might be able to outrun a patrol car, but you will not outrun a police helicopter, and certainly not radio communications.

RECORDS: An open records lawsuit will resolve the question of whether the Comanche County Detention Center is operating as a law enforcement agency.

RECORD: The Oklahoma County Jail has a record *low* inmate population.

RESIGNED: The City Attorney for the City of Pawhuska has resigned.

LEAK: An air conditioner leak provided some excitement inside the Osage County Courthouse.

FORENSICS: A new frontier in forensic science is shattered glass analysis.

FORGIVENESS: DOC touted the National Day of Forgiveness...one day after executing Emmanuel Littlejohn.

SKILLS: A formerly incarcerated OKC woman now helps incarcerated women learn cosmetology skills.

CRASH: Dense fog contributed to a crash involving a DOC bus transporting 37 inmates near Perkins.

MOST WANTED: The Attorney General's Office now has an FBI-style 10 Most Wanted website.

ARRESTED: A Stillwater man has been arrested for possessing something called DMT.

BODYCAMs: All DOC correctional officers will have body cams beginning in October.

COMPLAINTS: A new website aims to hold police, prosecutors, and judges accountable but it faces resistance from the FOP.

DOWN: Violent crime is down in Oklahoma, following the national trend.

ARRESTED: Two persons have been arrested in a high-end bicycle theft ring.

WACKY CRIME

PAWNEE: Best practice is not arrive for your court appearance on a charge of possession of a stolen vehicle...in a stolen vehicle.

PHRASING: You do not see the phrase "irate swordplay" in headlines very often.

CHICKENS: OHP stepped in to save chickens scattered along the highway. There has to be some joke there somewhere.

ROCKS: Police respond to a call about a student bringing in a radioactive rock to Owasso High School.

ASSAULT: An Ardmore man assaulted another man...with hot beans.

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