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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

[Janice Cassandra Wrenn v. State](#), No. F-2022-294 (Okl.Cr., September 28, 2023) (unpublished): **Restitution:** Wrenn was convicted by jury in Oklahoma County (the Hon. Heather E. Coyle, presiding) of multiple counts of Medicaid Fraud. The Court affirmed over several claims, but vacated the restitution award in one count because the specific restitution statute governing Medicaid Fraud did not apply to it.

[Re: Transcript Rates](#), 2023 OK 93 (September 25, 2023): **Transcripts:** This is an order from the Supreme Court regarding court reporters which requires a digital copy of a transcript when a paper copy has been purchased.

TENTH CIRCUIT

[United States v. Shannon James Kepler](#), No. 22-5006 (10th Cir., July 25, 2023) (Published) (Hartz, Seymour & Matheson) (N.D. Okla., Hon. Gregory K. Frizzell): **Federal Sentencing Guidelines (Crime of Violence); Prosecutorial Misconduct (Improper Questions); Jury Instructions (Murder); Cumulative Error:** In this appeal involving the former Tulsa police officer who shot and killed the boyfriend of his daughter, the panel affirmed over claims related to: 1) second-degree murder is a “crime of violence”; 2) jury instructions on malice element of first- and second-degree murder; 3) prosecutorial misconduct; and 4) cumulative error.

[United States v. Kyle Joseph Vannortwick](#), No. 22-7034 (10th Cir., July 25, 2023) (Published) (Bacharach, Kelly & Briscoe) (E.D. Okla., Hon. Ronald A. White): **Federal Sentencing Guidelines (Criminal History):** In this second-degree murder case, the panel found no plain error in a claim that the district court had erred in calculating the criminal history points.

[Jerry Dale Meek v. Jimmy Martin](#), No. 20-7021 (10th Cir., July 25, 2023) (Published) (Holmes, C.J., Baldock & Matheson) (E.D. Okla., Hon. Ronald A. White): **Habeas Corpus; Sufficiency; IAC (failure to present evidence which was precluded by discovery rules); Cumulative Error:** Denial of habeas corpus relief is affirmed in this factually complex murder case over claims related to: 1) sufficiency of the evidence in a circumstantial case of murder; 2) IAC (failure to object to question/offer evidence). NOTE: In footnote 14, the panel expounds upon the “party presentation principle” and justifies at length fact that the panel supported the State’s arguments with facts that State did not even argue. In other words, the panel was a better advocate for the State’s position than the State lawyers and it is interesting to read how the panel tries to justify this, particularly Chief Judge Holmes, who is the most aggressive judge on the Court when it comes to waiver/forfeiture of issues.

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. Tyree J. White](#), No. 21-2296 (7th Cir., September 6, 2023):

Federal Sentencing Guidelines (Maximum Sentence); Conspiracy: 108-month sentence for Conspiracy to Commit Robbery is vacated because under the general federal conspiracy statute, 18 U.S.C. §371, the statutory maximum is 60 months.

NOTE: This is one of those obvious things that is sometimes easy to overlook. Always check the statute first to determine the proper statutory range.

[United States v. William K. Washington](#), No. 21-3299 (3rd Cir., August 24, 2023):

Sufficiency; Indictments/Informations (Specificity): Washington was convicted for assaulting two people providing security services for a federal building. However, they were not “federal officers” which is how the Government charged Washington, so in this opinion the panel reversed with instructions to enter an acquittal. This is an interesting opinion because the statute covers persons assisting federal officers, but the Government did not charge that and the panel held the Government to the specific charge it had made.

[United States v. James Reginald Talley](#), No. 22-13921 (11th Cir., September 7, 2023): **Supervised Release; Fugitive Tolling:** The issue was whether absconding during a term of supervised release tolled the supervised release period. The panel answer in the negative. NOTE: There is a circuit split on this issue, with the Eleventh joining the First, but contra are the Second, Third, Fourth, and Ninth Circuits.

THE OKLAHOMA CONSTITUTION

There was a thread on the listserv recently about the State trying to compel a password for a cell phone. Brian K. Morton posted a reminder that the Oklahoma

Constitution protects witness compulsion of the accused, but used different (and arguably more broad) language than the Fifth Amendment.

The Fifth Amendment provides that the accused shall not “be compelled in any criminal case to be a witness against himself.”

However, our state Constitution provides at Article II, section 21: “No person shall be compelled to give evidence which will tend to incriminate him, except as in this Constitution specifically provided.”

Typically, the OCCA will be resistant to an expansive interpretation of our state Constitution if it contains the same language as the U.S. Constitution, but in this context the language is different and arguably more expansive in favor of the accused. In addition, the Oklahoma Supreme Court has used the state Constitution as providing more protection than the federal Constitution in [*Turner v. City of Lawton*](#), 1986 OK 51, 733 P.2d 375; [see also *Umholtz v. City of Tulsa*](#), 1977 OK 98, 565 P.2d 15; [*Bosh v. Cherokee County Building Authority*](#), 2013 OK 9, 305 P.3d 994 (reaffirming *Turner*).

Other states have interpreted their respective Constitutions to provide greater protection to citizens than the federal Constitution. *See, e.g., State v. Ladson*, 979 P.2d 833 (Wash. 1999) (regarding pretext traffic stops); *State v. Brown*, 356 Ark. 460, 156 S.W.3d 722 (Ark. 2004) (home-dweller must be informed of right to refuse to talk to police during a knock-and-talk). These are the ones that I have catalogued when researching this years ago, so there should more/others since then for added support.

The OCCA has been more reserved, although it adopted the exclusionary rule several decades before the Supreme Court made it part of the Fourteenth Amendment. *See Richardson v. State*, 1992 OK CR 76.

In *Brumfield v. State*, 2007 OK CR 10, the Court seemed on the verge, in *dicta*, of reaching the question whether knock-and-talks survived our state Constitution, but trial counsel had failed to object at trial so the Court never reached the issue although it was discussed in-depth for some reason. So, I suspect that in the right case with a preserved issue the Court might be persuaded to interpret the state Constitution in a manner that provides more protection to Oklahoma citizens, but we have to be diligent and do our part.

VICTORIES

DEREK CHANCE, OKC, represented a client charged with murdering his parents, but a good result of not guilty by reason of insanity was had. Nice job, Derek!

LETITIA BRADY, OIDS, secured a not guilty verdict for a client charged with Rape in the Second Degree. This was her second jury trial, but the first one solo. Terrific job, Letitia!

HEARSAY

RENAMED: DOC is re-naming the Davis Correctional Center.

PARDONS: The Governor of Missouri is liberally granting pardons.

MENTAL HEALTH: Tulsa County District Attorney Steve Kunzweiler said that the mental health system in Oklahoma needs to be “totally demolished” and rebuilt from the ground up.

CRIME DECREASE: Violent crime in Tulsa is decreasing; but crime overall is increasing in **Broken Arrow**.

KILLED: A Ringling police officer was killed in an accident in Texas.

BURGLARY: Two persons broke several car windows while burgling at the state capitol.

BUGS: There is a bedbug problem at the Kay County Courthouse.

AMNESTY: Oklahoma County will offer a warrant amnesty program in mid-October.

OVERCROWDED: Comanche County Commissioners are addressing jail overcrowding.

RESIGNED: The Warden at Eddie Warrior has resigned under dubious circumstances.

WACKY CRIME

LEARNER: A teen ager with a learner's permit got busted for doing 97 mph on the Broken Arrow Expressway.

TULSA: A man is going around Tulsa...posing as a dental assistant.

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