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OKLAHOMA CRIMINAL DEFENSE WEEKLY

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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

No new cases of note.

TENTH CIRCUIT

[United States v. Winter Rose Old Rock](#), No. 22-4047 (10th Cir., August 11, 2023) (Published) (Phillips, Murphy & Rossman): **Supervised Release:** Term of supervised release upon revocation that extended the statutory maximum is legal.

[United States v. Edmond Carl Warrington](#), No. 22-7003 (10th Cir., August 11, 2023) (Published) (Hartz, Seymour & Matheson) (E.D. Okla.): **Interrogations (Sixth Amendment); Fines:** Sex offense case where Warrington had been accused in state court but pursuant to *McGirt* the federal government took over in federal court. His convictions are affirmed over claims related to: 1) suppression of statements made during transport (even though he had counsel for state, this did not count for federal; and he waived his rights under Miranda in any event); and 2) JVTa assessment of \$5,000.00 was assessed per count rather than one assessment per offender (this was an issue of first impression and the panel found no plain error in the triple counting here).

[United States v. Jeriah Scott Budder](#), No. 22-7027 (10th Cir., August 7, 2023) (Published) (Hartz, McHugh & Carson) (E.D. Okla.): **Retroactivity:** In this *McGirt*-related case, Budder asserted that *McGirt* should not have been applied to him retroactively to support a federal conviction because Oklahoma law provides more protection for self-defense claims. The panel rejected this argument.

[United States v. Montgomery Akers](#), No. 21-3226 (10th Cir., August 4, 2023) (Published) (Phillips, Murphy & Rossman): **Sanctions:** A serial abuser of the litigation process in criminal cases was smacked with a \$40,000.00 sanction. The panel upheld the sanction, but remanded for the district court to further support the large amount under several legal factors.

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. Daniel Porter Critchfield](#), No. 22-4063 (4th Cir., August 31, 2023): **Search and Seizure (Reasonable Suspicion)**: Critchfield pled guilty to firearm possession as an unlawful drug user, but the panel reversed the denial of a suppression grant because officers lacked reasonable suspicion of criminal activity when they first detained him. NOTE: Judge Richardson dissented.

[United States v. Tobias Diggs](#), No. 22-1502 (7th Cir., September 5, 2023): **Evidence (Privileges; Spousal)**: The panel affirmed armed robbery convictions over a claimed violation of spousal privilege, but the opinion and concurrence contain good discussions of the law regarding this privilege, and specifically whether a spouse participating in joint criminal activity may still invoke it (there is a circuit split with the Seventh Circuit concluding no, but every other circuit says yes).

[United States v. Mitchell Daniells](#), No. 19-2188 (1st Cir., August 22, 2023): **Possession (Firearm by Person Under Indictment)**: Conviction for possession of firearm under indictment is reversed based on instructional error regarding intent.

TRACI SODERSTROM CASE

Traci Soderstrom, acting as a district judge in Lincoln County, got in some hot water a while back when video footage emerged of her texting excessively to her bailiff during a murder trial. This resulted in an investigation by the Council on Judicial Complaints, which in turn opened a case before the Court on the Judiciary when Chief Justice Kane filed a formal Petition seeking her removal from office and immediate suspension. She voluntarily suspended with benefits during the proceedings, which is apparently why she has been stripped of the honorary title of “Judge” or “The Honorable” and is instead referred to in the Petition by name only.

These proceedings are infrequent (I can recall three such cases within the last 10 years or so), but it is interesting to see how the entire process works. The case is [State of Oklahoma ex rel. M. John Kane, IV, Chief Justice of the Supreme Court of the State of Oklahoma v. Traci Soderstrom, No. CJTD-2023-2](#). You can click on the link to the case and download the pleadings, including the Petition, the Order convening the Court on the Judiciary Trial Division, the judges comprising that Court, and other miscellaneous pleadings. The Presiding Judge was the Hon. Thad Balkman out of Cleveland County, but Soderstrom apparently

stated that she had contacted him about the requirement of a record in recusal proceedings and received his advice. Since he may be a witness, he has recused.

The Petition has the details, which is mainly related to the texting and the salacious details of those, but the investigation also produced some other examples of bias (mainly against the State) and oppression in office. Most of it reads to me like low-level gossip stuff and minor petty irritations that nearly all judges do to us practitioners from time to time, but I suppose that too much of it in an unprofessional and certainly injudicious manner is unbecoming to the office itself and needs correction.

GAMBLER: Secrets from a Life at Risk by Billy Walters

I used to read a lot of books, and I still do, but nowadays I prefer using Audible and have a professional narrator read them to me, usually at night when I lie down to unwind. One of the recent books I listened to was *Gambler: Secrets from a Life at Risk* by Billy Walters. Walters is an old-time sports bettor, widely regarded as the most successful sports bettor of all time, making legendary bets on sports but like every Las Vegas rounder, he gambled on everything and especially liked high-stakes golf bets. I first saw Walters in a *60 Minutes* piece years ago about sports betting.

Of course, he was constantly being indicted and/or arrested on one charge or another. Walters narrated the book himself and does a decent job of describing his hard-scrabble life as a poor kid in Kentucky, struggles with alcoholism and gambling, and his descriptions of his legal problems are interesting, especially since he was able to hire top-notch lawyers (and he was acquitted of one set of indictments). One of the lawyers he hired was Oscar Goodman, himself a Vegas legend, former mayor of Las Vegas, and lawyer to all sorts of high rolling rounders, gamblers, and Mafioso.

One time, Walters was being investigated and prosecuted by the FBI for bookmaking, when in reality all he and his group were doing was making legal bets in Vegas. Problem was, his group kept winning and the feds did not think this was possible. He felt sure that if he only met with the lead FBI agent and explained the difference between bookmaking and betting, it would all go away. So, like many of our clients who are successful and smart in other areas of life he thought he could reason with the FBI and make them see the error of their ways, so he ran this idea by Oscar. It went like this:

“There’s no way you’re talking to this FBI agent.” [Oscar] said. “It ain’t gonna do you any good.” “All I’m going to do is explain the difference between betting and bookmaking.” I said. “What harm can it do?” “You’re being naïve.” Oscar replied. “There’s no good that comes out of you talkin’ to a fuckin’ FBI Agent.” In retrospect, I wish I’d listened to Oscar.

Indeed.

VICTORIES

WES CHERRY & EDDIE FORAKER, McAlester, secured a not guilty verdict for a client accused in Muskogee County for Murder in the First Degree. This was apparently Eddie’s first jury trial and he delivered the closing argument, a nice sign of things to come. Great work, Wes and Eddie!

TOMMY ADLER, DAN GOOD, and SCOTT ANDERSON, worked collectively to win an acquittal/dismissal on Double Jeopardy grounds in Oklahoma County. This was an effort of hard work when Tommy and Dan took over a multiple-county Lewd Acts case from another lawyer. After the first witness at trial, the State informed the trial court that its case agent was ill and could not testify and the State requested a mistrial. The defense threw a fit and objected. The trial court granted the mistrial, however this opened the door to a Double Jeopardy claim which Scott noticed and urged them to pursue, which they did. The State, to their credit, agreed and confessed the motion. Great job, Tommy, Dan and Scott!

JARROD STEVENSON, OKC, had an odd case where a juror, prior to sentencing, told the trial judge at church that he had not disclosed the fact that he had been a victim of molestation as a child. Judge Eilers in Woodward, to his credit, disclosed this and granted a new trial. During the re-trial, Jarrod walked the client with not guilty verdicts, with assistance from OIDS Investigators Tom Koen and Rick Yohn. Great win, Jarrod!

HEARSAY

FEES: The Oklahoma Supreme Court has chimed in on DOC reimbursement fees to county jails.

FUNDS: An Oklahoma man used his pandemic relief funds to clear himself of murder.

RENOVATIONS: The Oklahoma County Sheriff's Office is set for renovations, including ADA compliance.

TULSA: Tulsa County is considering different options for its courthouse, including building a separate facility for criminal justice cases.

PUNISHMENT: Inmates at Great Plains may have been punished by being locked inside a 2x2 shower stall for days.

DNA: DNA has cleared an Ada man in a rape case from 1988.

GIDEON: On the 60th anniversary of the *Gideon* case, the Sixth Amendment Center analyzed some numbers.

EXECUTIVE DIRECTOR: Jeffrey Cartmell is the new Executive Director of the OJA.

CONTEMPT: A Pontotoc County Judge has set a \$1 million bond for contempt of court.

FORFEITURE: The Lighthorse police may be stepping up civil asset forfeiture.

INVESTIGATION: Garfield County Judge Brian Lovell has been charged in Texas with a possible drive-by, and is being investigated by the OSBI.

ARRESTED: An OKC police officer has been arrested in an OKC prostitution sting.

ARRESTED II: An OKC police officer has been arrested for falsifying records.

ARRESTED III: A Carter County Jailer has been arrested for sexual misconduct with an inmate.

HOT: Inmate deaths raise questions about temperatures in Oklahoma prisons. However, **DOC** has responded that prisons are cooled properly.

ANGERED: A victim is really upset that a defendant has been released from prison so early.

LITIGATION: The Osage County Sheriff is suing the Osage County District Attorney.

AWARENESS: Oklahoma County Sheriff Deputies will wear pink badges for the rest of the month in recognition of Breast Cancer Awareness Month.

APPOINTED: Special Judge Richard Hathcoat has been appointed as the new District Judge in Tulsa County.

O.U.: O.U. Law Dean Kathleen Guzman is stepping down, and the O.U. College of Law now ranks #51 in the latest U.S. News & World Report rankings.

INCREASE: Stalking and motor vehicle thefts were up at the O.U. campus in 2022.

NEW JAIL: The new Oklahoma County Jail will be built near the airport.

WACKY CRIME

MATERMINDS: Two men burglarized a property...on the grounds of the Lawton Correctional Facility prison.

FLIGHT: Someone tried to transport two apparently inert German hand grenades through the Will Rogers World Airport.

IMPERSONATION: An off-duty, off-base military policeman has been accused of...impersonating a police officer.

THIEF: An OKC woman has been accused of stealing thousands of dollars worth of...rocks.

TULSA: A Tulsa man attempted a carjacking...armed with a spatula.

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