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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

[Jordi Eduardo Olvera v. State](#), 2024 OK CR 28 (October 17, 2024):

Interrogations (Fifth Amendment); Sufficiency (Desecration of Corpse); IAC: Olvera was convicted by jury in Oklahoma County (the Hon. Heather E. Coyle, presiding) of Murder in the First Degree and other counts. The Court affirmed over claims related to: 1) admission of his statement as based on an unlawful arrest (no objection at trial so plain error review; harmless); 2) admission of statements after *Miranda* (deemed knowing and voluntary); 3) sufficiency of the evidence of the crime of Desecration of a Human Corpse; 4) IAC for not objecting to admission of the statement (no prejudice); 5) excessive consecutive sentences (does not shock the conscious of the Court); and 6) cumulative error. NOTE: It is unclear why this case was published, other than a statement on issue one that the

Court wanted to “clearly inform” the bench and bar that a failure to preserve a challenge to the admissibility of evidence obtained from an allegedly unlawful arrest waives appellate review for all but plain error.

[Michael Shawn Gwyn v. State](#), No. F-2023-173 (Okla. Cr., October 17, 2024)

(unpublished): **Waiver (Right to Jury Trial); IAC (Conflict);**

Confrontation/Cross-Examination: In this bench trial case out of Wagoner County (the Hon. Douglas A. Kirkley, presiding), Gwyn was convicted of Child Sexual Abuse. The Court reversed on several grounds: 1) inadequate record of a waiver of the right to jury trial; 2) IAC through an actual conflict (trial counsel also represented the wife who was also charged); and 3) admission of the co-defendant wife’s statement of guilt in the plea documents, which was hearsay.

TENTH CIRCUIT

[Omar Ricardo Godinez v. Dean Williams, Executive Director](#), No. 22-1194 (10th Cir., August 26, 2024) (Published) (Tymkovich, McHugh & Moritz): **Juveniles & Y.O.:** Godinez was a minor when he committed crimes in Colorado and received a sentence of 32-life. He sought habeas relief on the basis of Graham, arguing that his sentence was unconstitutional because although he is eligible for parole, the state parole board cannot consider his maturity and rehabilitation at the time of his hearing. The panel certified a question to the Colorado Supreme Court which held that the parole board can consider these things. Thus, habeas relief is denied and also the claim is premature since he can challenge his actual parole hearing.

[United States v. Arthur Aragon](#), No. 23-2135 (10th Cir., August 23, 2024)

(Published) (Phillips, Kelly & Federico): **Federal Sentencing Guidelines (Use of Firearm):** The panel analyzes application of USSG 2K2.1(b)(6)(B) which adds four levels when the accused had “used or possessed any firearm...in connection with another felony offense.” The district court applied this enhancement even though it found that Aragon did not commit arson under New Mexico law when he threw a Molotov cocktail onto his neighbor’s property—only that this action “had the potential to give rise to felony arson” and so the enhancement was proper. Even the panel of the Tenth Circuit found this was error and reversed.

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.

HEARSAY

SURGE: Comanche County DA Kyle Cabelka said that sex crimes are “surging” in his district.

LOCKS: Anyone in need of a gun lock may pick one up at the Owasso Police Department.

NEW: The City of Tecumseh has named Nick Atwood as its new city attorney.

EXODUS: After the **Pawnee County Sheriff resigned**, other employees left in a mass exodus.

RECOVERED: Police in Tulsa have recovered a Glock with a suppressor from a 14-year-old.

BRADY: Interesting report on *Brady* issues in Oklahoma.

McGIRT: Jimcy McGirt pled no contest in Seminole tribal court to failing to register as a sex offender in Seminole County.

WACKY CRIME

TULSA: A Tulsa man pulled over by police wielded a python and refused to provide ID...no, not a Smith & Wesson Python, an actual python snake.

OHIO: A police officer in Ohio was attacked...by a rogue Halloween decoration.

COFFEE: A person has been injured...in a coffee pot assault.

HACKED: Some robot vacuum cleaners have been reprogrammed by hackers to chase their owners around the house and hurl profanities.

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