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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

[Nikohl Ullman and Breanna Parsons v. The Oklahoma Highway Patrol](#), 2023 OK 100 (October 17, 2023): **GTCA**: This is a civil lawsuit against an OHP Trooper involved in a car crash, but it involves whether a letter to OHP to preserve evidence related to the car crash in anticipation of litigation is sufficient for the notice requirement under Governmental Tort Claims Act. The Court held that it was not. **NOTE**: This is a nasty procedural trap if you sue the State. The GTCA contains specific criteria for notice and how to initiate the lawsuit, so be aware of this.

[Danny Lee Kesler, Jr., v. State](#), No. M-2022-770 (Okl.Cr., October 19, 2023) (unpublished): **Sufficiency (DUS)**: Kesler was convicted at a bench trial in

Okmulgee County (the Hon. Deborah Reheard presiding) of Driving under Suspension and Possession of Forged Notes. Kesler was charged with prior DUS and at trial the State presented evidence of the priors with only his DPS Internal Driving Record rather than a court document of conviction. The Court held this was error (no relief to Kesler, though, because the punishment was basically the same as first offense DUS).

[State v. Ronald William Merritt](#), No. S-2023-292 (Okl.Cr., October 19, 2023) (unpublished): **State Appeals; Hearsay (Child Hearsay)**: In this State appeal out of Grady County, Merritt was charged with Lewd Acts Under 12 and was bound over at preliminary hearing by the Hon. Regina Lowe. Prior to trial, he filed a MIL to prohibit the State from introducing child hearsay based on lack of timely notice. The Hon. Z. Joseph Young held the statements admissible under a different statute, but inadmissible under 2803.1 because the minor complainant would have attained the age of 13 at trial. As you might have guessed by now, the Court reversed this sensible decision as an abuse of discretion because although the State gave untimely notice under the statute, it was harmless because the defense had constructive notice about the statements (thus rendering the notice provision in the statute basically an advisory suggestion rather than a legal rule if the State fails to comply with it). As to the issue of the child being older than 12 at the time of trial, the Court cited to its own unpublished opinion—in this unpublished opinion—construing the statute to allow the statements based on the age of the child when they were made and the age of the child at trial has no bearing. NOTE: Sometimes I read these opinions in relation to the old days when the Court published pretty much everything. It stopped doing that years ago, and we get only a smattering of published opinions a year, and even those do not seem to follow any logical pattern to move the law forward. The issues involved in this case, and the cited unpublished case, are important to the bench and bar, yet this opinion was not published for reasons I cannot fathom.

[State of Oklahoma ex rel. Oklahoma Bar Association v. Isaac Seth Brantley Shields](#), No. SCBD No. 7480 (Okla. Sup. Ct., October 16, 2023): **Prosecutorial Misconduct (Eavesdropping on Jury)**: This is the Report and Recommendation of the Professional Responsibility Tribunal in the disciplinary matter of former prosecutor Isaac Shields where he and his co-worker eavesdropped on a deliberating jury. He received a deferred prosecution agreement from the District Attorney in a companion criminal case, and here the Tribunal recommended a Public Censure. Unless the Supreme Court decides that is insufficient, it looks like he will be back practicing in no time.

TENTH CIRCUIT

[United States v. Monterial Wesley](#), No. 22-3066 (10th Cir., August 28, 2023) (Published) (*en banc*): **First Step Act**: This is an order denying rehearing *en banc* on the issue of whether the compassionate release statute allows a district court to consider a claim of prosecutorial misconduct as part of that analysis. The district court held that it did not since that claim is properly brought under 2255 which requires Circuit authorization. NOTE: Judge Rossman dissented from the denial of *en banc* review and made the case for such review.

[Daniel Cortez-Lazcano v. Whitten](#), No. 22-5031 (10th Cir., August 25, 2023) (Published) (Moritz, Baldock & Murphy) (N.D. Okla., Hon. John F. Heill, III, C.J.): **Peremptory Challenges; IAC (Plea Offers)**: Denial of habeas relief to state prisoner is affirmed over claims related to: 1) a *Batson* claim; and 2) IAC in failing to notify of favorable plea offer.

[United States v. Earl Hardy Morrow](#), No. 22-5060 (10th Cir., August 21, 2023) (Published) (Hartz, Seymour & Matheson) (N.D. Okla., Hon. Claire V. Eagan): **Evidence (1. Burks Notice and Bad Acts; 2. Hearsay (Statement Against Penal Interest); Prosecutorial Misconduct (Improper Argument)**: Receipt/Possession of Child Porn conviction is affirmed over claims related to: 1) admission of anime cartoons depicting child porn as 404(b) evidence since those are not covered by the statute (no abuse of discretion since it was admitted to show lack of mistake, accident, or knowledge; and not unfairly prejudicial); 2) exclusion of statement against penal interest made by his brother as insufficiently corroborated (no abuse of discretion); and 3) prosecutorial misconduct in arguing falsely that the brother was still being prosecuted when the Government knew that his case had been dismissed (no prejudice or plain error).

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. Martin Renteria](#), No. 22-50242 (5th Cir., October 12, 2023): **Commerce Clause**: Not a winner, but interesting discussion in a child sex trafficking case of the contours of the Commerce Clause after *Bond* to regulate what is asserted to be purely local crimes.

[United States v. Howard Sanford Williams](#), No. 22-10316 (5th Cir., October 13, 2023): **Experts; Evidence (Cell Phone)**: Not a winner, but in this child sex trafficking case the Government used Cellebrite to extract data from a cell phone and a police officer testified about it without being qualified as an expert. In this matter of first impression, the panel affirmed. NOTE: This is adverse authority, but an issue we may want to note and be sure to litigate in such cases.

[United States v. Antonio Vladimar Stowe McDaniel](#), No. 20-7579 (4th Cir., October 20, 2023): **Coram Nobis**: McDaniel attacked his old conviction for firearm possession based on subsequent SCOTUS cases that rendered a predicate crime not a crime of violence. The panel denied this attack, but the discussion of this rare writ is instructive.

VICTORIES

None noted.

HEARSAY

CHARGED: An Edmond police officer who shot her brother in August has been charged with First Degree Manslaughter.

DRUG COURT: The Oklahoma County Drug Court has been awarded \$1million to continue operations.

RIP: Former Oklahoma County Associate District Judge Nan Patton has passed.

VENDING: The Oklahoma County Courthouse now has a Naloxone vending machine.

FOLLOW-UP: KFOR has a follow-up story on the previous report of inmates at Great Plains CC being confined to showers.

RESIGNATION: Former District Judge Tim Henderson has resigned from the Bar.

RETIRED: The Stephens County Sheriff has announced his retirement.

NOMINATED: President Biden has nominated former Cherokee Nation A.G. Sara Hill to the federal bench in the Northern District.

ARRESTED: A teenager has been arrested in connection with a shooting in the Oklahoma County Courthouse parking garage.

ARRESTED II: The Fire Chief in a small Alfalfa County town has been arrested for rape.

WACKY CRIME

DISCOVERED: Employees at a Braum's in Norman discovered a man sleeping...in the ceiling of the store.

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