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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

[State v. Velasquez](#), 2024 OK CR 29 (October 24, 2024): **Search and Seizure (Exclusionary Rule)**: Velasquez was charged in Tulsa County with drug possession and proceeds. The Hon. Michelle Keely granted a motion to quash and suppressed the fruits of a search. Police tried to execute a search warrant, knocked, then noticed a security camera and then entered without giving anyone inside the opportunity to answer the door. All parties agreed this violated 22 OS 1228. However, in this opinion the Court reversed and, applying Supreme Court precedent, held that the exclusionary rule does not apply to knock-and-announce violations. NOTE: Early in my career, I discovered that the Oklahoma Constitution can be read to grant more protection to the citizen from the State, and that in fact the OCCA had adopted the exclusionary rule long before the Supreme

Court. I argued this frequently in early appeals, but over the years the OCCA has steadily ruled that the Bill of Rights in the Oklahoma Constitution is essentially dead letter, governed now by the Supreme Court and its interpretation of the federal Constitution. This is a shame and indicates the steady march to the erosion of our rights.

TENTH CIRCUIT

[United States v. Michael Tracy McFadden](#), No. 23-1089 (10th Cir., August 30, 2024) (Published) (Phillips, Kelly & Federico): **Evidence (Hearsay; Residual Exception)**: In this child sex abuse case, the panel found error when the district court admitted a prior video interview with the complaining witness under the catchall residual exception of the hearsay rule under Rule 807. However, the majority held that admission was harmless. NOTE: Judge Federico dissented, concluding that it was not harmless and that in fact the Government conceded this fact and the Court was doing the work for the Government.

[United States v. Jose Pena](#), No. 23-2047 (10th Cir., September 5, 2024) (Published) (McHugh, Murphy & Carson): **Interrogations**: Admission of confession is affirmed over claim that it was involuntary.

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.

VICTORIES

DAN POND & AUSTIN BROWNING, Swain Law Group in Norman, tried a two-count Information in McCurtain County where the State had alleged Lewd Acts and Rape I. The two-day trial took four days, hampered by a power outage. Dan reported that Judge Ragland was fair to the defense. The allegations involved 10 year old claims which were disclosed in 2016, but no charges were filed at that time. The “reinvestigation” was conducted by the County Sheriff with the aid of the ex-wife of the client. Oddly, the State investigator sat at counsel table for the State but was not called. So, Dan called him as a witness and hammered him about the sham “investigation.” Poor investigation, State hiding evidence, and lying ex-wife equals not guilty on both counts. Great job, Dan & Austin!

BILLY COYLE, OKC, has been hard at it, first defending a young man who was accused of shooting another man on campus corner in Norman, but who sat in jail for four years with prior counsel. Best offer was 25 to do to a lesser. The trial judge was Hon. Lynne McGuire, jury out for eight hours and returned a guilty verdict but with a recommendation of 6.5 years. After that, the next client was accused in Beckham County of Robbery w/Dangerous Weapon (Mace) and the alleged victim was the son of First Assistant Gena Webb, so a new prosecutor was appointed—Chris Boring from Woodward County. Judge Weeden refused the lesser included offense of petty larceny (and, of course, the jury asked if it could convict of something lesser). Not guilty across the board. Good job, Billy!

MARK MYLES, OKC, represented a client charged in Comanche County with several sex offenses. Jury was out 70 minutes after a two day trial with not guilty verdicts. Outstanding work, Mark!

HEARSAY

MOVE: The McClain County Court Clerk is moving temporarily.

ELECTION: Prisoners in Oklahoma polled about the upcoming presidential election were closely split, 39% for Trump vs. 36% for Harris.

RIP: The Murray County Undersheriff has passed from ALS.

RETIRING: The Broken Arrow Chief of Police is retiring.

SUCCESS: New data indicates that DOC’s work release program has been a success. Also, DOC **reported** that inmate-on-inmate violence has been reduced.

LAWSUIT: Lawton news station KSWO reported on its hearing before Judge Emmet Tayloe in its lawsuit against the county jail.

JUVENILES: The OK Policy Institute looks at the report on juvenile justice in Oklahoma.

SCENT OF DEATH: To prove that a corpse was once in a basement, a court in Indiana has admitted “scent of death” evidence.

PAIN: A Tulsa pharmacist has been arrested for stealing over \$12,000.00 in pain killers.

NEW CHIEF: David Houser has been sworn as the new Chief of Police in Ardmore.

TRENDS: Oklahoma City Mayor David Holt discussed the city’s crime trends.

K-9: The Oklahoma City Police Department has a new Patrol Therapy Dog.

ARRESTED: A man has been arrested for trying to introduce contraband into James Crabtree CC.

ARRESTED II: A public school administrator in Duncan and her husband have been arrested for embezzlement by the OSBI after 24 school vehicles have gone missing.

CRIME: Oklahoma lawmakers are looking for ways to reduce crime.

CHARGED: A former Oklahoma attorney has been charged with nine counts of fraud in federal court.

WACKY CRIME

CHEROKEE COUNTY: A deputy in Cherokee County took down successfully an emu that had been on the loose since July.

ARRESTED: The actor who played Tim Taylor’s son “Brad” on the old TV show “Home Improvement”....has been arrested for DUI in Custer County.

PUMPKINS: Just in time for Halloween, here are images of pumpkins carved by Scott Cummins, the World’s Best Pumpkin Carver.

KAY COUNTY: A woman has been arrested for DUI...after she drove through the Kay County Fairgrounds.

BIXBY: A man in Bixby impersonated an FBI agent to direct traffic at an elementary school pickup line.

NORMAN: A Lyft driver in Norman dutifully followed the GPS directions provided on his phone...which directed him to a stairway on OU's campus near Evans Hall.

THEFT: Someone in a cat costume is going around Oklahoma City stealing campaign signs.

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