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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. Hudson](#), 2022 OK CR 28 (October 28, 2022): **Quash**: In this writ case out of Oklahoma County, the defendant was charged with a misdemeanor and filed a motion to quash. The State sought mandamus to determine whether motions to quash are available in misdemeanor cases or should apply only to felonies. In this writ opinion, the Court granted mandamus relief, concluding motions to quash are limited to felony cases. NOTE: I had sought writs in two cases on this issue and won both where the Court concluded in unpublished opinions that published case law allowed this. However, the Court overruled those unpublished orders, so you need to update your research files. No more motions to quash in misdemeanor cases.

[Charles Lee Greenfield v. State](#), No. F-2021-793 (Okl.Cr., October 27, 2022) (unpublished): **Double Jeopardy**: Greenfield was convicted by jury in Oklahoma County (the Hon. Amy L. Palumbo, presiding) of multiple counts vehicular homicide stemming from an accident he caused while speeding and high on meth. The Court affirmed, but take note of the multiple punishment/section 11 analysis as to some of the counts arising under 47 O.S. 11-905 which specifically provides that violations under the section may be charged in addition to other offenses. Thus, the OCCA has interpreted this as supplanting section 11, and thus no double punishment error.

TENTH CIRCUIT

[United States v. Carlos Herrera, et al.](#), No. 19-2126 (10th Cir., October 27, 2022) (Published) (Bacharach, Briscoe & McHugh): **Prosecutorial Misconduct (Brady); Evidence (Bad Acts); Severance; Continuance; VICAR; Cumulative Error; Evidence (Exculpatory Statement)**: This is a case involving VICAR charges for three SNM prison gang members. This opinion is so long it is as a table of contents, but the panel affirmed over claims related to: 1) Brady; 2) evidence of prior bad acts; 3) severance; 4) denial of continuance; 5) attack on the VICAR “position clause”; 6) exclusion of exculpatory statements; and cumulative 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 Jay Manley](#), No. 20-6812 (4th Cir., October 6, 2022):

Scienter: In this complicated case involving violent crimes in aid of racketeering activity (VICAR), the panel analyzed the proper mens rea of VICAR Assault and VICAR Murder.

VICTORIES

JODIE GAGE, Stillwater, represented a client in Payne County charged with Child Sexual Abuse and Child Physical Abuse. The jury returned a not guilty verdict on count one and 18 months on count two, which the client had already served. Nice win, Jodie!

MARNY HILL, Tulsa, represented a client charged with Shooting w/Intent to Kill and Assault & Battery w/Firearm in Tulsa County, a nice fellow with face tattoos. After the jury returned a verdict of not guilty, the State elected to dismiss a third count of Possession of Firearm AFCF. Great job, Marny!

PETER HESS and TIM BEEBE, Enid, secured a not guilty verdict in Choctaw Nation Tribal Court for a client charged with a single count of Child Neglect. Great work, Peter and Tim!

TOMMY ADLER & DAN GOOD, OKC, represented a client who drove a work van, got in an accident, and was charged with Negligent Homicide by failing to devote full time and attention, failure to yield and improper left turn. The defense was simply that it was an accident, not a crime (she did not act recklessness or culpable negligence). Great job, Tommy!

HEARSAY

LESSONS: Garvin County Associate District Judge Steve Kendall has shared some lessons learned while on the bench.

DROWNED: A naked man who was handcuffed and detained by Tulsa PD escaped, jumped into a pond, and has apparently drowned.

FUNDS: Some rehab/treatment centers are wondering where the money is that was promised by SQ 780 & 781.

DPS: A DPS “glitch” is causing drivers to be unlawfully arrested (criminal defense attorney Ed Blau commented).

SUIT: The State is suing BOP for access to federal prisoner John Hanson—who is also under sentence of death here in Oklahoma and they want him back.

THE PAST: Interesting story about Oklahoma’s violent past.

WACKY CRIME

OKC: A man was arrested for trying to rob an O’Reilly’s Auto Parts store...and was thwarted when an employee threw a brake pad which stopped him in his tracks.

BURGLARY: As Mark Hoover described this story: A burglar checked in to a house, but could not check out.

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