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OKLAHOMA CRIMINAL DEFENSE WEEKLY

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[James L. Hankins,](#)
Publisher

(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

[Jimmy Dale Jackson, Jr., v. State](#), 2022 OK CR 29 (November 10, 2022):

Suspended Sentences; Notice: In this revocation appeal out of Washington County involving a plea of no contest to Lewd Molestation, the State filed an application to revoke alleging multiple violations including “technical” violations and also violations of the specialized rules of probation for sex offenders—but the district court never imposed those specialized rules. The State argued that the statutes imposing specialized sex offender rules and conditions are triggered automatically whenever the accused is sentenced to a registerable offense, but the Court disagreed, construing the statutes to not require this and also on the basis that revocation was imposed without notice of the rules.

[Russell Everett Neasbitt v. Hon. Wallace Coppedge](#), No. PR-2021-1478 (Okl.Cr., November 4, 2022) (unpublished): **Jurisdiction (Appellate); Extraordinary Writs**: This is a fractured order denying relief to a Petitioner, but it applies to many others, where a district court granted relief under *McGirt*, then waited five months to un-grant relief without any apparent jurisdiction to do so. The OCCA determined that the district court had jurisdiction to do this, and denied relief. NOTE: Judge Rowland dissented, joined by Judge Lumpkin. Judge Hudson Specially Concurred, asserting that the decision was based on precedent and rejected the theme of the dissent that this is a “feel-good judicial decision” that corrects an inequitable situation, but should be used infrequently (*i.e.*, whenever the Court feels like it). Judge Lewis also Specially Concurred. This kind of ruling by our Court is one that reinforces the feeling that they are just making it up as they go. The State failed to appeal. All time frames to appeal lapsed. Yet, all is forgiven and the State is allowed to undo an order that was lawfully entered at the time even when the State failed to meet time deadlines to appeal. Jason May did a great job arguing this and his client, as well as the other petitioners, deserve better. We all do.

[State v. Michael DeWayne Nash](#), No. S-2021-1416 (Okl.Cr., November 10, 2022) (unpublished): **State Appeals; Appellate Procedure**: This is a State appeal out of Oklahoma County involving a DUI (Second Offense) wherein a demurrer was granted at PH on the basis of failure of the State to prove identity. To compound matters, the presiding judge not only affirmed the magistrate, but also held that the State had failed to comply with appellate procedure in perfecting the appeal. Nonetheless, the Court held that when both the State and the defense counsel went to the Court Administrator to find out what to do, this was somehow an acquiescence that constituted invited error. NOTE: Invited error seems inapplicable here and extremely unfair to defense counsel. Presiding Judge Rowland Specially Concurred, rejecting an expansive interpretation of the rules in a prior case. Vice Presiding Judge Hudson Specially Concurred, and would overrule *State v. Barnes*, 1997 OK CR 81, as an overbroad interpretation of appellate rules. Judge Lumpkin Concurred in Part/Dissented in Part, finding that the presiding judge did not error in finding that the State waived its right to appeal. Judge Musseman Concurred in the Result.

[Aaron Leonard Cook v. State](#), No. F-2021-786 (Okl.Cr., November 10, 2022) (unpublished): **Prosecutorial Misconduct (Vindictive Prosecution)**: Cook was charged with Lewd Molestation in Payne County. The Hon. Stephen Kistler declared a mistrial when the jury could not reach a verdict. The State filed subsequently a beefed up Information, adding a count of Child Sexual Abuse, and the jury found him guilty in this second trial. On appeal, Cook raised a single issue

of vindictive prosecution, which the Court denied. NOTE: Counsel did not preserve the error, so the Court applied plain error review, but noted that the Court had not previously addressed the issue of vindictive prosecution. Thus, this appears to be the first opinion where the Court outlined the contours of this defense and analyzed the extant case law.

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. Cecil McDonald Davis](#), No. 16-7671 (4th Cir., November 10, 2022): **Federal Sentencing Guidelines (Crime of Violence)**: Denial of 2255 motion is reversed because a prior conviction for federal arson is not categorically a crime of violence.

[United States v. Joshua Seekins](#), No. 21-10556 (5th Cir., November 11, 2022): This is a set of opinions regarding the denial of en banc review in the prosecution of a homeless man (an convicted felon) who possessed two shotgun shells that he found in a dumpster. The dissenting judges penned a spirited diatribe against the reach and scope of the federal government that is worth a read. I suspect that many federal judges, particularly in the South, might feel the same way.

VICTORIES

DAVID BALLARD, Investigator at Valour Investigations, deserves some kudos for his work as outlined by attorney Nick Lee. Usually, the Victory section

is for lawyers, but investigators often play key roles in cases. Nick said that in the last three weeks or so, David's investigation efforts, analysis and testimony assisted to a great degree in the dismissal of a First Degree Murder case, two Trafficking cases, and a felony DUI, as well as a successful suppression of evidence in a traffic stop case. Great work, David!

DAVID SMITH, Norman, secured five not guilty verdicts in a Child Sexual Abuse case in Cleveland County and a hung jury on three other counts. The detailed 8-hour confession by the client contained some of the most incendiary admissions imaginable as well as an admission to downloading child porn. David was able to convince the jury that the confession was false. Another amazing win for David!

STEPHEN JONES & WILLIAM JEWELL, Enid, secured a not guilty on all counts verdict which included allegations of First Degree Murder and First Degree Manslaughter in Woods County (Judge Eilers in Alva, presiding). The client was an ex-Marine who spent two years in jail because he could not afford the bail. The jury deliberated 20 minutes after considering the principal State evidence of an audio-video of the shooting and also the defense witnesses of the events that occurred prior to the shooting which as argued by the defense was justified under the Stand Your Ground and Make My Day statutes. Great win, Stephen and William!

JANAY CLOUGHERTY & KYLE KILLIAM, Tulsa County PD, secured not guilty verdicts across the board for a client charged with A&B Likely to Produce Death and Maiming. Prosecutor Ashley Nix recommended 20 years DOC and refused to negotiate, even though the State was prosecuting a woman who had been abused by the "victim" in the case, but the jury saw it for what it was. Great job, Janay & Kyle!

HEARSAY

DEATH SENTENCE: A woman in Texas has been sentenced to death for a horrific stabbing of a pregnant woman in an effort to get the baby.

SPEEDING: A driver from Delaware was clocked at 109 mph near Sapulpa.

LAWSUIT: A lawsuit filed against Gov. Stitt and the Pardon and Parole Board alleged negligence for paroling a man who subsequently killed three people.

RETAINED: The Oklahoma County Jail Administrator gets to keep his job for the time being.

THEFTS: The U.S. Attorney for the N.D. predicts a decrease in catalytic converter thefts.

CONSTITUTIONAL SHERIFFS: A large group of county sheriffs across the country believe that their authority supersedes federal law.

REVAMP: State Representative Justin Humphrey wants to revamp the criminal justice system in Oklahoma.

CRACKDOWN: The feds have cracked down on correctional officers smuggling contraband into prisons.

ARRESTED: State Representative Ryan Martinez has been arrested for DUI.

FORWARD: Newly elected District Attorney for Lincoln County Adam Panter says that he is looking forward not backward.

WACKY CRIME

LAWYERS: OKC area attorney David Bedford, known for being the attorney attacked by disbarred attorney L.B. Moon, has his own problems now.

CHICKASHA: Police are seeking a suspect...who has an AK-47 tattooed on his face. Also, Oklahoma's most popular tattoo is apparently "**No Regrets.**"

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