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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

No notable cases.

TENTH CIRCUIT

[United States v. Lewis](#), No. 22-3125 (10th Cir., September 10, 2024) (Published) (Matheson, Phillips & Moritz): **Search and Seizure (Wiretaps); Speedy Trial:** Drug conspiracy convictions are affirmed over claims related to: 1) speedy trial; and 2) whether the signature on a wiretap application was by a validly authorized DOJ official.

[United States v. Elijah DeWayne Hicks](#), No. 23-7017 (10th Cir., September 9, 2024) (Published) (Bacharach, Baldock & Kelly) (E.D. Okla.): **Self-Defense:** Murder case where the accused asserted self-defense and requested a jury instruction that he had no legal duty to retreat or exhaust non-lethal alternatives before acting in self-defense. The district court refused. The panel reversed finding that refusal to give the instruction was prejudicial error. NOTE: This is a nice appellate win for Stuart Southerland, previously of the Tulsa County Public Defender's Office where he won appeals in the OCCA, but who now is doing the same thing for the Federal Public Defender's Office. Great job, Stuart!

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).*

[Hamm v. Smith](#), No. 23-167 (U.S., November 4, 2024) (*per curiam*): **Death Penalty (Mental Retardation):** In this brief *per curiam* opinion, the district court vacated a death sentence based on intellectual disability under *Atkins*, and the Eleventh Circuit affirmed. However, the Court was unclear on the reasoning of the Eleventh Circuit as to whether the lowest score of several tests was conclusive (69 which is below the 70 threshold) or should be viewed collectively with all IQ test scores. The Court granted certiorari and remanded for clarification, signaling that the Court will address this issue on the merits in the future. NOTE: Justice Thomas and Justice Gorsuch would grant the petition and set the case for argument.

OTHER CASES OF NOTE

[United States v. Russell Lucius Laffitte](#), No. 23-4509 (4th Cir., November 14, 2024): **Jurors:** In this bank fraud case involving the infamous ex-lawyer Alex Murdaugh, the jury sent two questions during deliberations, one needed antibiotics and the other said, “Feeling pressured to change my vote” followed by additional

notes of juror tensions, including one juror who felt bullied by the other jurors. This juror was questioned and dismissed *sua sponte* by the district court without notice to, or an opportunity to hear argument from, the parties. The district court characterized the dismissed juror as having “anxiety.” In this opinion, the panel ruled that Rule 606 disallowed the use of juror affidavits to support the claims, but concluded that removal of the juror violated the Sixth Amendment right to an impartial jury.

[United States v. Nathaniel T. Taylor](#), No. 23-5344 (6th Cir., November 15, 2024): **Search and Seizure (Traffic Stops)**: Traffic stop for speeding resulted in calling the K-9 and discovery of a firearm, which was trouble because Taylor was a convicted felon. The district court denied a motion to suppress, but in this opinion the panel reversed on the basis that the officer did not have reasonable suspicion to detain the motorist beyond the time necessary to issue the traffic citation.

[United States v. Joseph Scott Gray](#), No. 22-1828 (6th Cir., November 14, 2024): **Restitution**: Fraud offenses are affirmed, but a restitution order is vacated because it covered fraud that occurred earlier than the time frames as alleged in the indictment.

OUSTED

Part of the election process in Oklahoma is the judicial “retention” ballot in which appellate judges are placed on the ballot every six years and voters vote yes or no to retain them in office. For as long as I have been voting, all judges are routinely retained by a 2:1 margin.

However, this last election saw the extraordinary situation where sitting [Supreme Court Justice Yvonne Kauger](#) received a majority “no” votes on retention and has been voted out. I have never seen this. Some of the justices were caught in political headwinds and the vote was close for Justice Edmondson and Justice Gurich as well. All three judges of the Oklahoma Court of Criminal were retained (Judge Rowland, Judge Lewis, and Judge Musseman), as were all civil appeals judges.

VICTORIES

JOE WHITE, OKC, represented a client in Cleveland County who was a teacher charged with assaulting a student. Not guilty! The jury was out for a little over an hour. Great job, Joe!

CHANCE RABON, OIDS Lawton Office, secured a not guilty verdict in Comanche County in a murder case. Great work, Chance!

HEARSAY

FAMILIES: Garfield and Grant Counties have a Family Treatment Court for the purpose of treating addiction and keeping families together or reuniting them.

EXECUTION: An execution date has been set for Kevin Underwood—which falls on his birthday. Mark Hoover says that the OCCA also did this to Tuan Anh Nguyen as well.

TRAFFIC: OKC PD has announced that it will step up traffic patrols on the Lake Hefner Parkway and the Broadway Extension.

SETTLED: The lawsuit over the treatment of incompetent people in jail has been settled.

APPOINTED: Gov. Stitt has appointed Donna Dirickson to replace Judge Jill Weedon, who has retired.

DRUGS: OBN Director Donnie Anderson stated that meth, fentanyl, and illegal marijuana grows are the top drug problems in Oklahoma.

JUSTICE: A man exonerated by DNA, but arrested for failing to register as a sex offender has been finally relieved of his duty to register.

PLEAS: Attorney Bobby Don Gifford commented on the decision of a woman to reject a plea deal in a homicide case.

FEES: Many Oklahoma women feel imprisoned by court fees and fines.

FINALISTS: The Attorney General's Office has released the names of four regional Officers of the Year, with the statewide winner to be announced in early December.

LAST OF ITS KIND: The last tollbooth in Oklahoma will be closed before Thanksgiving.

WACKY CRIME

DRUG USE SUSPECTED: An OKC man ran around naked, bit the tip off another man's finger, and ate it. Police suspect meth and PCP.

BEARS: Investigating insurance claims for damages to the interiors of expensive cars caused by bears...the California Department of Insurance has found that it was just a guy in a bear suit the whole time.

SPEED: A Tulsa teen on his lunch break was caught driving 62 m.p.h....in a school zone.

HUNGRY: An OSU fraternity member broke into two duplexes in Stillwater...to steal some food.

THIEF: A man in Broken Arrow walked out the door with boxes of Pokemon cards, with a photo of the scoundrel.

TULSA: A Tulsa man has been arrested for opening fire...on a drone.

QUESTIONS: A Geronimo man asked a Sheriff's Deputy, "Is it against the law to burn my own house down?" The clink of the handcuffs indicated that it is.

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