

OCDW 11.20.23

Category



OKLAHOMA CRIMINAL DEFENSE WEEKLY

www.ocdw.com

11.20.23

[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

[State ex rel. Matthew J. Ballard v. Hon. Terrell Crosson](#), 2023 OK CR 18 (November 16, 2023): **Indians; State Appeals**: In this State appeal out of Rogers County, the Hon. Terrell Crosson, Special Judge refused to issue an arrest warrant in a case because he concluded the State lacked jurisdiction under *McGirt*. The Court reversed and granted the writ, concluding that jurisdictional issues like this should be resolved in the adversarial process rather than at the initial stage of *ex parte* review of probable cause by a magistrate.

[Mark Wayne Gaddy v. State](#), No. F-2022-101 (Okla. Cr., November 16, 2023) (unpublished): **Search and Seizure (Community Caretaking)**: Gaddy was convicted of Trafficking at a bench trial in Pontotoc County before the Hon. C.

Steven Kessinger. The bench trial was conducted in order to preserve a search and seizure issue involving an anonymous phone call to conduct a welfare check on a female in a vehicle driven by Gaddy. Police stopped the car and the Court affirmed under the community caretaking function. NOTE: Rowland, P.J., dissented, concluding that the community caretaking function was stretched too far in this case.

[Byron James Shepard v. State](#), No. PCD-2020-704 (Okla. Cr., November 16, 2023) (unpublished): **State Habeas/PC; Record on Appeal**: Post-conviction is denied in this capital case raising the usual slew of ineffective assistance and evidentiary claims, requesting and evidentiary hearing, and requesting discovery. Petitioner also requested copies of the recordings of the oral argument on direct appeal. The Court denied this claim on the basis that the argument recordings are for the Court to decide the case and are not part of the record on appeal.

[Ricky Nelson Wright v. State](#), No. F-2022-302 (Okla. Cr., November 16, 2023) (unpublished): **Confrontation and Cross-Examination; Jury Instructions (Flight)**: Nelson was convicted by jury in Tulsa County (the Hon. Sharon K. Holmes, presiding) as YO with sex crimes of Rape and Forcible Sodomy. The Court affirmed over claims related to use of PH transcript containing testimony of a deceased witness (no hearsay or Confrontation issue); and an objection to an instruction on flight. NOTE: Judge Lumpkin specially concurred, expounding on the flight instruction issue.

TENTH CIRCUIT

[United States v. Edward Joseph Parson](#), No. 22-5056 (10th Cir., October 24, 2023) (Published) (Moritz, Baldock & Murphy) (N.D. Okla., Hon. Claire V. Eagan): **Experts; Child Sexual Abuse**: Convictions for Child Sexual Abuse are affirmed over admission of expert testimony about the process of child disclosures of abuse (no abuse of discretion); and testimony from the expert that children are four times more likely to omit facts than to make up facts in the process of disclosing abuse (no plain error).

[United States v. Anthony Lamont Mason, II](#), No. 22-5083 (10th Cir., October 24, 2023) (Published) (Hartz, Kelly & Matheson) (N.D. Okla., Hon. Stephen J. Murphy): **Assimilative Crimes Act**: Mason appealed his sentence of 84-months for burglary and domestic abuse by strangulation under the Indian Major Crimes Act which “assimilates” the minimum and maximum sentences under state law for

crimes not defined under federal law. The crimes at issue here arose under Oklahoma law and Mason argued that “not less than 7 years” was not a mandatory minimum under Oklahoma law because that sentence can be suspended or deferred. The panel did not buy this argument and affirmed his sentence.

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. Jeffrey Derond Kersee](#), No. 23-20381 (5th Cir., November 17, 2023): **Supervised Release:** Revocation of supervised release is vacated because the probationer has a qualified right to confront and cross-examine his accuser, and this right was denied without good cause.

VICTORIES

NICK VANGILDER & REID ROGEZ, Tulsa County P.D., recently secured a not guilty verdict for their client in Tulsa County who had been charged with Domestic A&B. The jury deliberated for about an hour. The best part is that Nick and Reid are brand new members of the bar, newly hired at Tulsa County, and this was the first jury trial for both! Great job, Nick & Reid!

JARROD STEVENSON, OKC, finds himself once again in the winner’s circle in Kay County, defending a client accused of Possession with Intent to Distribute (Meth). Client had been arrested with slightly less than five grams of meth in one bag with two syringes, one used and one unused. Client testified

which triggered impeachment with a prior distribution charge. But, it took the jury about thirty-seconds to decide that there was not distribution, and only about fifteen minutes to decide on a year punishment when the rec of 15 in/5 out. Good job, Jarrod!

TOMMY ADLER & JOSH WELCH, OKC, went to Caddo County on a sex crimes case set for jury trial. Three counts of Child Sexual Abuse against the client's adopted daughter that has a punishment range of 0-Life. Tommy had by chance run into Josh (who has made an Ali-like return to the ring) in Oklahoma County and invited him to lunch, and Josh ended up as co-counsel on the case. On the day of trial, the State caved with a plea offer of all sex offenses dismissed and a nolo plea on Aggravated A&B with a 2-year deferred, no jail time, no registration. Terrific result Tommy and Josh!

HEARSAY

PLATES: Attorney Joe Halloran answers some questions about the ongoing dispute about tribal license plates in Oklahoma. Also, the dispute has **escalated** to a lawsuit.

DEATH PENALTY: Long but interesting article about the state of the death penalty in Oklahoma.

RIP: Federal Magistrate Judge Gary Purcell has passed. **NOTE**: I appeared before him many times, and always thought he was an extremely fair jurist.

ESCAPE: Two inmates have escaped from Dick Connor Correctional Center.

REEFER: The Organized Task Force of the Attorney General's Office has seized 36 tons of illegal marijuana.

UNIFORMS: Some eyebrows have been raised when DOC executives purchased fancy new dress uniforms at state expense.

HIRED: The City of Chickasha has hired an Assistant Chief of Police.

NEW CHIEF: The City of Oilton has a new Chief of Police.

SHOW CAUSE: The OCCA may be unhappy with Pittsburg County Judge Mike Hogan in the James Ryder case, and has set a show-cause hearing on November

21, 2023. Judge Hogan apparently set a competency hearing after the scheduled execution date.

FORGIVENESS: The lack of forgiveness of people who have committed crimes poses an issue for former inmates upon release and integration.

NEW HQ: The Tulsa County Sheriff's Office has opened its new headquarters.

TRUANTS: A municipal judge in Muskogee says that truancy is "out of control" (watch video).

RETIRED: The Ada Chief of Police has announced his retirement.

VISITS: Rep. Justin Humphries wants to introduce a bill that would allow elected officials to visit any state prison unannounced.

WACKY CRIME

I HAVE THE NEED...THE NEED FOR SPEED: Headline: "Tulsa Police Pull Over McLaren Driver for Hitting Jetliner Speeds on Highway." I wonder what a speeding ticket costs for driving 147 mph in a 67 mph zone.

BLACK FRIDAY: In addition to being Black Friday, the day after Thanksgiving is also Brown Friday...the busiest day of the year for plumbers. Ewwww

BOUND OVER: A man in Ottawa County has been bound over for supplying two teenaged girls with....adult novelties.

HAPPY BIRTHDAY!: A birthday celebration in Tulsa turned violent...over a \$13.00 bar tab.

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