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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

[Brandon Lewis Richardson v. State](#), No. RE-2021-213 (OkI.Cr., November 17, 2022) (unpublished): **Suspended Sentences:** In this revocation of suspended sentence case out of Oklahoma County (the Hon. Heather Coyle, presiding), the hearing was continued past the 20-day deadline because of COVID procedures. Richardson argued that the trial court lost jurisdiction, but in this opinion the Court held that the time frame was tolled as a result of the health situation. **NOTE:** The Court did not cite any authority for this, and it appears to be another opinion where “jurisdiction” lost somehow does not prevent a court from exercising it over the accused.

[United States v. Stolynn Shane Stambaugh](#), No. CR-22-218-PRW-2 (W.D. Okla., November 14, 2022): **Second Amendment**: This is an instructive order by the Hon. Patrick R. Wyrick granting a motion to dismiss a count of Receipt of Firearm by a Person Under Indictment on “as applied” constitutional Second Amendment grounds. NOTE: This is a good motion practice victory by Craig Hoehns.

TENTH CIRCUIT

[Benjamin Cole v. Farris](#), No. 22-5093 (10th Cir., November 9, 2022) (Published) (Tymkovich, Murphy & Moritz) (N.D. Okla., Hon. Gregory K. Frizzell): **Insanity & Competency**: This is an order denying authorization to file a second/successive habeas petition by an Oklahoma death row inmate (since executed) and denying a stay of execution based upon competency to be executed.

[Ralph Leroy Menzies v. Robert Powell, Warden](#), No. 19-4042 (10th Cir., November 7, 2022) (Published) (Hartz, Bacharach & Eid): **Habeas Corpus (Death Penalty)**: This is a death penalty affirmation habeas case out of Utah that comprises 126 pages with a lengthy index of the issues, which include: 1) IAC trial counsel in the guilt phase (failure to investigate and challenge admissibility of evidence); 2) jury instructions on reasonable doubt; 3) IAC at the sentencing phase; 4) statements made during psyche evaluation; 5) introduction of his prison file during sentencing; 6) notice of aggravating circumstances; 7) duplication of aggravating circumstances; and 8) errors in the trial transcript.

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.

[Shoop v. Cunningham](#), No. 21-1587 (November 14, 2022): The Sixth Circuit granted an evidentiary hearing in a capital case regarding juror misconduct and the Court denied certiorari. However, Justices Thomas, Alito and Gorsuch dissented, and would summarily grant and reverse the judgment. The dissent from the denial of certiorari is interesting because it highlights the hostility that these three have with the Sixth Circuit and how it applies AEDPA deference.

OTHER CASES OF NOTE

[United States v. Lee Jones](#), No. 21-3636 (6th Cir., November 1, 2022): **Guilty Pleas:** Jones pled guilty to felon in possession of a firearm, but the panel held that the plea was not knowing and voluntarily entered because the trial court failed to inform him that the court would decide his sentence regardless of the calculations of the Guidelines by the parties.

[United States v. Nathaniel Williams](#), No. 22-6464 (4th Cir., November 17, 2022): **Civil Commitment:** Federal prisoners about to be released may be committed civilly if they suffer from mental problems which pose a risk to others. In making such an assessment, must a court consider any terms of supervision that would govern the prisoner's conduct post release. The panel held that the answer is yes.

[United States v. Yobani Barcenas-Rumualdo](#), No. 21-50795 (5th Cir., November 18, 2022): **Supervised Release:** District court may not consider the appeal clock in determining the appropriate term of supervised release.

VICTORIES

CRAIG HOEHNS, OKC, scored a nifty dismissal of a firearm count based on Second Amendment grounds in the *Stambaugh* case featured above. Great job, Craig!

ROBERT GIFFORD, OKC, won a dismissal in the Northern District on a speedy trial claim in a mental health proceeding. Judge Frizzell granted the motion without prejudice, and although the client was allowed to proceed pro se, the motion was also allowed and it was a winner. Nice job, Robert!

LANCE PHILLIPS, OKC, won two acquittals in the last month, one last week after a full week of trial in a federal drug conspiracy case out of Tulsa; and two weeks before that in Oklahoma County in a Rape and Burglary case before Judge Stinson (ADAs were Lori McConnell and Meredith Easter). Now that is an impressive one-two punch for the defense. Great job, Lance!

BRENDAN M. MCHUGH & MARK ANTINORO, land here for an interesting civil jury verdict in a defamation case brought by their clients, former District Attorney Janice Steidley and former ADA David Iski against a Claremore police officer named John Singer. The case revolved around the grand jury shenanigans in Rogers County a few years ago and whether the grand jury petition circulated by Singer was retaliatory as a result of the release of *Giglio* material about Singer by the Plaintiffs. The jury found for the Plaintiffs and awarded \$250,000.00 to Steidley and \$150,000.00 to Iski. Brendan also said that the trial disclosed a lot of crazy behavior by local law enforcement. Nice work, Brendan & Mark!

TOMMY ADLER & TODD ADLER (no relation), OKC, represented the accused in the infamous Uber driver case out of Tulsa where the client was accused of Murder in the First Degree for running over his customer. The jury found the client not guilty of that charge, but Judge Smith gave a Manslaughter instruction over objection and the jury convicted on that with a rec of 5-10 years. That is a heck of a departure from Murder One. Good work, Tommy and Todd!

HEARSAY

REFLECTIONS: Retiring LeFlore County District Attorney Jeff Smith reflected on his sixteen years in office.

McGIRT: Although *McGirt* is not retroactive, it is still applicable in new cases.

STITT: Gov. Stitt's son was involved in an incident with Logan County deputies.

MENTAL HEALTH: DOJ is taking a look at the ways Oklahoma responds to mental health issues.

ARRESTS: Dozens of people were arrested at a "street takeover" during the Halloween weekend in OKC.

JAIL DEATH: There has been another death at the Oklahoma County Jail.

GUNS: A list of the most popular guns Oklahomans choose to carry.

ARRESTED: The former Bursar at ECU has been arrested for embezzlement.

CONTRABAND: A former correctional officer at El Reno FCI has pled guilty to accepting bribes to smuggle contraband into the facility.

COVID: Cleveland County District Attorney Greg Mashburn spoke about how some states are dealing with the backlog of cases stemming from COVID.

RETIREMENT: The Duncan Chief of Police has announced his retirement.

EQUIPMENT: Small town police departments struggle to equip patrol officers.

BUST: Seminole police have seized 1700 pounds of marijuana (with an impressive photo).

BONUS: The Tulsa Police Department is offering a \$15,000.00 signing bonus.

SAFE: Out state's first "Safe Haven" baby box will be installed next year.

CRIME: According to the Chief of Police in Lawton, overall crime is down, but theft is up.

WACKY CRIME

HUNTING: A hunter called 911 after shooting himself in the foot...with a crossbow...while trespassing...and lacking a hunting license or deer tags.

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