

OCDW 11.25.24

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OKLAHOMA CRIMINAL DEFENSE WEEKLY

www.ocdw.com

11.25.24

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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

[Deante Lewan Williams v. State](#), No. F-2023-598 (Okla. Cr., November 21, 2024) (unpublished): **Accomplice Liability**: Williams was convicted by jury in Osage County (the Hon. Stuart Tate, presiding) of First Degree Felony Murder and Robbery AFCF. The Court affirmed, but I included the case because a former co-defendant testified against Williams and an issue on appeal was whether this accomplice testimony was corroborated sufficiently. The opinion contains a good discussion of the law on this topic.

TENTH CIRCUIT

[United States v. Scott Lowe](#), No. 23-1156 (10th Cir., September 20, 2024) (Published) (Tymkovich, Ebel & Rossman): **Search and Seizure (Warrantless)**: Denial of motion to suppress fruits of the warrantless search of a storage unit is affirmed, primarily because Lowe did not pay for access the unit lawfully so the panel held that he did not have a legitimate expectation of privacy.

[United States v. Sergio Ruiz](#), No. 23-2027 (10th Cir., September 16, 2024) (Published) (Tymkovich, Baldock & Rossman): Identification: An informant identified Ruiz as a drug mule, and at trial Ruiz moved to suppress the identification from a photo array as unduly suggestive. The district court denied the motion and panel affirmed because the informant interacted with Ruiz in person prior to viewing the photo array. NOTE: Judge Rossman concurred, concluding that the photo array was in fact unduly suggestive, even though the panel majority did not reach that question.

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

[Ex Parte Andrew Wayne Roark](#), No. WR-56,380-03 (Tex. Crim. App., October 9, 2024): **Shaken Baby Syndrome**: Conviction based on Shaken Baby Syndrome evidence is reversed and remanded for a new trial where there plausible explanations for the observed injuries.

KAY COUNTY DISCOVERY ISSUES

A judge has dismissed a sitting jury in a misdemeanor case out of Kay County for **discovery violations** by the prosecutor, Rob Davis. The Kay County News reports that this is the *third* case in a month to be ended or continued because of discovery violations of the State, and the *fourth* in the last 18 months—with 3 out of 4 involving Rob Davis, according to defense attorney Jarrod Stevenson.

According to Stevenson, pre-trial discovery showed that the investigating officer had obtained two videos of the alleged crime occurring. One of them did not show anything illegal by the accused, and the second video allegedly showed the accused committing the crime but this second video did not work and was unable to be played, and was never disclosed to Stevenson. On cross-examination, Stevenson asked the officer if he had any evidence to prove the accused had committed the crime, to which the witness replied, “yes,” and revealed for the first time to the defense in open court before the jury that he was able to get the second video to play the night before. Stevenson asked the officer if he had informed prosecutor Davis of this fact and he had, but Davis had never disclosed it to the defense. Stevenson has since filed a motion for sanctions.

Stevenson also reported that he had another incident in Kay County, this time with District Attorney Brian Hermanson, in a case where a co-defendant had turned on the accused and decided to snitch. Hermanson indicated that there was no plea agreement arrangement with the co-defendant after Stevenson had sought out this information in motions and e-mails, but Stevenson had already spoken to the co-defendant who had told him otherwise. Hermanson told the judge that there was no plea deal with the co-defendant, but that he would have the file brought up to check—which yielded the bright yellow plea rec sheet on top when he opened the file, dated 18 months earlier.

So, a cautionary note to practitioners in Kay County or elsewhere who may have cases in Kay County.

VICTORIES

KEN GALLON & JEREMY BENNETT, Miami, secured a dismissal of a case on a motion to quash in a case involving an allegation of sexual assault. Nice work, Ken & Jeremy!

HEARSAY

MCGIRT: Tulsa attorney Richard O'Carroll believes that he can fight the charges against Jimcy McGirt.

JAIL: Regarding the new Oklahoma County Jail, there is optimism among the architects and the County Commissioners for the new building.

SMUGGLER: A woman who had been fired from her position as a detention officer at the Oklahoma County Jail has been arrested for attempting a contraband drop at one of the prisons in Pittsburg County; also, a corrections officer at Mack Alford Correctional Center has been arrested for **smuggling contraband** into the facility.

KITS: Tulsa P.D. has worked through about 50% of the backlog of sexual assault test kits.

PRIORITY: The Payne County Jail Administrator says that improving the mental health of inmates is a priority.

RETIRED: Miami, Oklahoma, City Attorney (and former Ottawa County District Attorney) Ben Loring has announced his retirement.

RIP: Former District Judge Greg Dixon has passed after a battle with pancreatic cancer. Judge Dixon was a district judge in McClain and Garvin counties, and had been previously an Assistant District Attorney in that area.

SCANNERS: The Rogers County Jail now uses body scanners to find fentanyl on both visitors and inmates.

STOLEN: A suspect in Tulsa stole a police SUV.

ARRESTED: Municipal Court Judge Kelly Lynn (Wewoka & Dibble) has been arrested for direct contempt of court after going ballistic in the courtroom of James Siderias in Oklahoma County.

ARRESTED II: A Ponca City man has been arrested for a murder committed in Nebraska in 1969.

WACKY CRIME

HUNTIN': In a scene reminiscent of The Beverly Hillbillies, two men in Tulsa were caught with pellet guns at McClure Park...hunting squirrels to eat.

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