

OCDW 12.04.23

Category



OKLAHOMA CRIMINAL DEFENSE WEEKLY

www.ocdw.com

12.04.23

[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

[Hammon v. State](#), 2023 OK CR 19 (November 28, 2023): **State Post-Conviction; Retroactivity**: Last November, the Legislature amended state post-conviction statutes to follow the model of the federal habeas statutes which include a one-year statute of limitations for filing (one-year from the date that the direct appeal becomes final). However, this extinguished a lot petitions without notice. In this opinion, the Court crafted a one-year grace period, so that post-conviction petitions filed within one year of the new law were timely. NOTE: It is ironic that the OCCA released this opinion more than one-year after the grace period. In other words, no one knew they had the grace period, but now that we know, it has lapsed.

[Vicente Martinez Rivera v. State](#), No. F-2022-354 (Okla. Cr., November 30, 2023) (unpublished): **Speedy Trial (Pre-Indictment Delay)**: Rivera was convicted by jury in Oklahoma County of multiple sex offenses against a child (the Hon. Heather E. Coyle, presiding). The Court affirmed but there is an interesting discussion of the legal issue of pre-indictment delay where the children had made accusations in 2013, but Rivera was not charged until 2020. The Court characterized this 7-year delay as “investigative” on the grounds that the State did not file until it had more evidence, but this reason sounds flimsy in this case.

[Marcus Patterson v. State](#), No. F-2022-575 (Okla. Cr., November 30, 2023) (unpublished): **Appellate Practice**: Patterson was convicted by jury in Okmulgee County of Second-Degree Murder (the Hon. Pandee Ramirez, presiding). The Court affirmed but there was extended discussion in several opinions on the Court’s practice of waiving claims when there are multiple legal claims raised in the same proposition of error. NOTE: The Court’s construction of Rule 3.5(A)(5) is the culprit here, and the Court has been increasingly aggressive in the last few years, spearheaded by Judge Lumpkin it appears, but in this case Vice-Presiding Judge Hudson explained his understanding of that Rule in a concurring-in-results opinion, as did Judge Lewis.

[Jonathan Leander Bates v. State](#), No. F-2022-42 (Okla. Cr., November 30, 2023) (unpublished): **Credit for Time Served**: Bates was convicted by jury in Oklahoma County (the Hon. Heather E. Coyle, presiding) of Breaking and Entering and Domestic A&B and sentenced to the max. The Court affirmed, but he raised a claim that since he was indigent and had to wait in jail pending trial, his sentence to the max of one year exceeds the statutory maximum since he was not given credit for time served. This is a valid legal claim, but Bates was in jail for another case which meant that he was not in jail pre-trial solely based on indigent status. NOTE: This opinion contains a good discussion of the law related to credit for time served.

TENTH CIRCUIT

[United States v. Dalton Dash Brown](#), No. 22-6175 (10th Cir., November 7, 2023) (Published) (Hartz, Kelly & Matheson) (W.D. Okla., Hon. Timothy D. DeGiusti, C.J.): **Federal Sentencing Guidelines (Firearms)**: Brown pled guilty to a single count of unlawful possession of ammunition and was sentenced to 120-months. On appeal, he raised several attacks on his sentence concerning five enhancements under the Guidelines (multiple-firearms, stolen firearms, possession of a high-

capacity magazine, reckless endangerment, and an “in-connection-with enhancement), but the Court affirmed.

[United States v. Kenneth Dale Walker](#), No. 22-5076 (10th Cir., October 30, 2023) (Published) (Hartz, Kelly & Matheson) (N.D. Okla., Hon. John F. Heil, III):

Discovery; Indians (Methods of Proof); Vouching; Jury Instructions (Unanimity of Means): Conviction for assault resulting in serious bodily injury in Indian Country is affirmed over claims related to: 1) admission of documents showing Indian status; 2) testimony of a medical expert through untimely disclosure and vouching; 3) denial of a unanimity-of-means jury instruction; 4) failing to consider sentencing disparities; and 5) plain error in imposing an anger management condition of supervised release.

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

[In re: Grand Jury 2021 Subpoenas](#), No. 22-1654 (4th Cir., November 22, 2023):

Grant Jury; Subpoenas: This is an interesting opinion where a medical malpractice lawyer was indicted for extortion in connection with trying to settle a claim. A grand jury issued multiple subpoenas *duces tecum* to various law firms involved. The district court granted the Government’s motion to compel. In this opinion, the panel affirmed in part and reversed in part. This is a good case containing the law in this area if any of you ever get embroiled in such a situation.

[United States v. Richard Lavar Carter](#), No. 21-4442 (4th Cir., November 21, 2023):

Federal Sentencing Guidelines (Fifth Amendment): Carter pled guilty to Hobbs Act robbery, but at sentencing he refused to name his accomplice. The district

court sentenced him harshly for this. On appeal, he raised a claim that the district court sentenced him more harshly for exercising his Fifth Amendment rights. The panel side-stepped the issue on waiver since Carter never explicitly invoked his Fifth Amendment rights in the district court, but the opinion contains a good discussion of this topic which is apparently the subject of a circuit split.

VICTORIES

ROBERT FAULK, Enid, demurred out a count of Murder in the Second Degree in Garfield County at preliminary hearing. The judge (Hon. Blake Gibson) was reportedly very complimentary of his advocacy. Odd facts where the client supposedly had a baby, but no baby can be found. A count of child neglect has gotten through, but the murder count is gone. Great job, Bobby!

JEREMY BENNETT & KEN GALLON, Miami, represented a client accused of child molestation in Miami. The client was a preacher, and the State had offered 10 in, so off to trial they went. The jury returned a guilty verdict but recommended only a year in county. That is a good result in that type of case. Good job, Jeremy and Ken!

HEARSAY

CHARGED: An OKC police officer has been charged with child abuse and domestic abuse.

CHARGED II: Two Cleveland County Detention Officers have been arrested for smuggling contraband into the jail.

CHARGED III: A football coach for Sapulpa Public Schools has been arrested for drug trafficking.

ARRESTED: Police in Sand Springs have arrested a man for impersonating a deputy, punching a teenager, and attacking another man with a machete.

HOMELESS: “Legal experts” say that efforts to criminalize homelessness in Oklahoma are on the rise.

SHIFT WORK: Ardmore police officers are transitioning to 12-hour work shifts.

NEW JAIL: Oklahoma County Commissioners are keeping their options open for a new county jail.

TOLLS: Thousands of Oklahoma motorists may be prevented from registering vehicles if they have unpaid tolls. **NOTE:** This is one of those seemingly innocuous things that government does that spreads to large things, *i.e.*, linking two separate things together to coerce compliance. Nearly everything is integrated digitally, and on our phones/cars/computers, so I would expect a lot more of this, especially when tracking/control mandates on cars kick in which allow government to control all cars remotely. Sure, it sounds good that the police can disable a car that is stolen (for “your safety”), but I can see where they will also disable your car if you do not have insurance, or are behind on your tag, or child support, etc. It is probably a generational thing, but I grew up at a time where everything was not so integrated, so the direction of these things is a little bit spooky to me.

BAIL: Bail Bondsmen in Oklahoma are concerned about The Bail Project.

INVESTIGATION: The Colbert Police Department is under investigation by the OSBI for a use of force incident.

DOG PROGRAM: The “Friends for Folks” prison dog program is still working wonders.

JAIL: Comanche County has entered agreements with Grady and Okmulgee Counties to house its jail inmates.

NOT SECURE: An activist says that the front lobby of the Oklahoma County Jail is not secure.

EXECUTION: Oklahoma death row inmate and a former client of mine, Phillip Hancock, has been **executed**. He had some choice words for the Attorney General before he went.

OD: Three Oklahoma County Jail inmates have overdosed on fentanyl.

GUNS: An increase in “gun switches” has prompted a new initiative in Oklahoma.

PRISONERS: A report shows a sharp uptick in Oklahoma’s prison population.

WACKY CRIME

BEER: Headline: “Late night beer theft and vandalism spree ends in arrest at local supermarket.”

DUNCAN: Headline: “Pepper Spray Trumps Plate of Waffles.”

CURSES: Oklahoma City ranks number four...for the most swear-words per person, an average of 25 per day.

OKC: Thieves have stolen...a wheelchair ramp.

FRESH: A man in Missouri has been charged with stealing \$1,200.00 worth of...air fresheners.

STILLWATER: Someone left a dead steer lying in the front yard of the Farmhouse fraternity at OSU.

OKC: The Dr. Pepper warehouse in OKC has been burgled...thieves made off with 5-gallon bags of Dr. Pepper syrup.

OKLAHOMA CRIMINAL DEFENSE WEEKLY

SUBSCRIPTIONS AND SUBMISSIONS: To subscribe to the *Oklahoma Criminal Defense Weekly* just send an e-mail to James L. Hankins at jameshankins@ocdw.com and include the e-mail address to which you want the issues to be delivered. I am sending out the issues for free now to whoever wants to receive them. Submissions of articles, war stories, letters, victory stories, comments or questions can be sent to Mr. Hankins via e-mail or you can contact him by phone at 405.753.4150, by fax at 405.445.4956, or by regular mail at James L. Hankins, MON ABRI BUSINESS CENTER, 2524 N. Broadway, Edmond, OK 73034.

ABOUT THE OCDW: The *Oklahoma Criminal Defense Weekly* is compiled, maintained, edited and distributed weekly by attorney James L. Hankins. Archived issues can be obtained by contacting Mr. Hankins directly, although some of them are on the web site at www.ocdw.com. OCDW accepts no money from sponsors. Mr. Hankins is solely responsible for its content. The OCDW web site is maintained by [Spark Line](#).

COPYRIGHT STATEMENT & DISCLAIMER: ©2005-2023 by James L. Hankins. All rights reserved. OCDW hereby grants free use of these materials for

any non-commercial purpose provided that proper credit to the OCDW is given. In the event that copyrighted works are included in an edition of the OCDW such works may not be reproduced without the consent of the copyright holder because under federal law the OCDW has no authority to allow the reproduction of the intellectual property of others. For purposes that go beyond “fair use” of the copyrighted material under federal law, the permission of the copyright holder must be obtained. If you are a copyright holder and object to any portion of an issue of the OCDW, please contact the publisher, James L. Hankins, at the contact information above (located under the SUBSCRIPTIONS AND SUBMISSIONS section). Finally, the materials presented in this newsletter are for informational purposes only, and are not, nor intended to be, legal advice or to create an attorney-client relationship. You should consult an experienced attorney licensed in your jurisdiction for legal advice applicable to the specific facts of your case. Cases are summarized in each weekly issue as they are issued and filed by the respective court, and are thus subject to being withdrawn, corrected, vacated, and/or modified or reversed without notice. Always conduct your own research!

UNSUBSCRIBE

If you have received this e-mail in error, or no longer wish to receive the weekly newsletter, simply reply to the message, or send a new message, to jameshankins@ocdw.com and type in “UNSUBSCRIBE” in the subject line, along with your name and e-mail address and you will be taken off the mailing list.