

OCDW 12.16.24

Category



OKLAHOMA CRIMINAL DEFENSE WEEKLY

www.ocdw.com

12.16.24

[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. Oklahoma Bar Association v. Ezell](#), 2024 OK 81 (December 9, 2024): **Attorneys:** In this discipline opinion regarding the former General Counsel for the Oklahoma State Department of Health, the Court accepted her resignation pending discipline, but I included the opinion to note the Specially Concurring opinion of Justice Combs, which indicates a strong preference that she not be allowed reinstatement.

TENTH CIRCUIT

[United States v. Thomas Crosby](#), No. 23-2155 (10th Cir., October 23, 2024) (Published) (Holmes, C.J., Baldock & McHugh): **Federal Sentencing Guidelines (Reasonableness)**: In this Possession of Child Pornography case, a sentence of five-days with credit for time served is vacated on the appeal of the Government as substantively unreasonable.

[United States v. Santiago Martinez](#), No. 23-2193 (10th Cir., November 19, 2024) (Published) (Phillips, Carson & Federico): **Interrogations (Fifth Amendment Post-Polygraph); Hearsay (Text Messages); Burks Notice/Bad Acts**: In this Government appeal of pre-trial rulings in a murder case, the district court granted a motion to suppress statements while in custody, denied the Government’s attempt to introduce text messages as non-hearsay, and ruled that the Government could not use a prior incident of violence by the accused towards the decedent under Rule 404(b). In this opinion, the panel reversed all three of these favorable rulings.

[Mica Alexander Martinez v. Christe Quick, Warden](#), No. 23-6001 (W.D. Okla., November 19, 2024) (Published) (W.D. Okla., Hon. Timothy D. DeGiusti, C.J.): **Habeas Corpus (Capital Habeas Cases); IAC; Cumulative Error**: Oklahoma death penalty conviction is affirmed over claims related to: 1) IAC appellate counsel for failing to raise IAC trial counsel regarding presentation of testimony of family members; 2) denial of a fair trial by the introduction of a single instance of Martinez using a racial slur; and 3) cumulative error.

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. Keith Todd Ashley](#), No. 23-40482 (5th Cir., December 12, 2024): **Sufficiency:** Some convictions for mail and wire fraud, Hobbs Act robbery, and bank theft while operating a Ponzi scheme are vacated for insufficient evidence.

VICTORIES

DAVID SMITH and ROBERT ROBLES, Norman, represented a client in Canadian County after a large neighbor dog attacked a 40+ year old special needs man who was in the custody of his older brother, Mr. Grey, a CLEET certified armed guard. Grey shot and killed the dog to protect his brother. He was charged with Animal Cruelty, lost his CLEET certification, his Second Amendment rights, and was thus unemployed in the security industry for years as a result. The State wanted this man to serve five years in prison. After three years, a revolving door of ADAs, and frustration by the client, the State realized that David was serious about trying the case...and they dismissed the case on the day of trial. This is a great win for David and Robert!

HEARSAY

CHARGED: An Oklahoma County detention officer has been charged with misdemeanor Assault and Battery for using excessive force on an inmate.

INSPECTIONS: The Health Department inspectors have been granted access to the Oklahoma County Jail for unannounced inspections.

PONTOTOC: Retiring Pontotoc County Sheriff Carl Allen has been named the new Specialty Courts Compliance Director for Pontotoc County.

ADA: New McClain County ADA Jacobi Whatley is settling into her job.

NGRI: The Department of Mental Health has a Request for Proposal for a mental health facility where people found NGRI would be sent, which concerns Tulsa County District Attorney Steve Kunzweiler.

DISCHARGE: A Blanchard Public Schools student “accessed” the gun of a School Resource Officer and discharged it while it was still holstered on the officer’s hip.

CHIEF: Oklahoma State University has named its new Chief of Police.

OPINION: Attorney General Gentner Drummond believes that the interests of Oklahoma County in building the new jail on Grand Boulevard will outweigh the interests of the City of Oklahoma City in not having it there.

EVALUATION: Oklahoma City attorney Robert Jackson objects to the re-evaluation of DOC inmate Ricky Malone.

DECORATED: Lawton Correctional Facility is decorated for the holidays.

INMATE DEATH: An inmate has been killed at OSP and the family along with Rep. Justin Humphrey want answers.

PAROLE: After years of declining parole rates, the rate of paroles granted in Oklahoma is on the rise.

TOLLS: Effective January 1, tolls on Oklahoma turnpikes will increase an average of 15%.

CHIEF: The City of Broken Arrow has named its new Chief of Police.

WACKY CRIME

LEGOS: A Lego crime ring was built brick by brick and operated in Oklahoma, Texas, Florida, and Pennsylvania.

MISSOURI: A couple in Missouri has been arrested for child abuse...following a “botched” at-home circumcision of their son.

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: ©2005-2024 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.